

**Outcome of Fitness to Practise Panel impairment hearing held on Monday 14, Tuesday 15, Wednesday 16, Thursday 17, Friday 18, Monday 21 and Tuesday 22 June 2021**

<b>Name</b>	Lena Gray
<b>Registration number</b>	3006017
<b>Part of Register</b>	Support Workers in a Care Home Service for Adults
<b>Current or most recent town of employment</b>	Arbroath
<b>Sanction</b>	Warning to stay on your registration for a period of one year and condition imposed
<b>Date of effect</b>	14 July 2021

The decision of the Fitness to Practise Panel is below followed by the allegation.

The following allegation and decision may refer to the Scottish Social Services Council as 'the Council' or 'the SSSC'.

### **Decision**

This is a Notice of the decision made by the Fitness to Practise Panel (the Panel) of the Scottish Social Services Council (the SSSC) which met on Monday 14, Tuesday 15, Wednesday 16, Thursday 17, Friday 18, Monday 21 and Tuesday 22 June 2021 by video conference.

At the hearing, the Panel decided that some of the allegations against you were proved, that your fitness to practise is impaired, and made the decision to impose a warning for a period of one year and conditions on your Registration in the part of the Register for Support Workers in a Care Home Service for Adults.

### Conditions

1. Within three months of returning to work with an employer in a registrable role, you must provide the SSSC with evidence, countersigned by your employer, that you have undertaken training that covers:
  - Adult Support and Protection
  - Providing dignified and respectful care to service users
  - Effective communication with service users and colleagues, which includes the areas of respect, dignity, emotional regulation and conflict resolution.

You should discuss with your employer the most effective way to complete this training. It can be in the form of face to face or online training, mentoring, supervision and/or independent study.

2. For a period of twelve months from the date of your return to employment in a registrable role, you must engage in formal supervision with your employer at least every six weeks.

During the course of each supervision session, you must discuss how you have put your learning from the training in condition 1. into practice, including how you are consistently demonstrating your ability to provide safe, respectful and dignified care to service users and your ability to communicate effectively with both service users and colleagues on a day-to-day basis.

3. You must submit a formal record of each supervision session, countersigned by your employer, to the SSSC's Fitness to Practise department within two weeks of each supervision session taking place.

### **Matters taken into account**

In coming to its decision, the Panel had regard to these documents:

- the Act
- the Code of Practice for Social Services Workers Revised 2016 (the Code)
- the Scottish Social Services Council (Fitness to Practise) Rules 2016 as amended (the Rules)
- Decisions Guidance for Fitness to Practise Panels and Scottish Social Services Council staff dated December 2017 (the Decisions Guidance).

### **Allegations**

The allegations against you are that while employed as a Social Care Officer by Angus Health & Social Care Partnership at [information redacted] in Arbroath and during the course of that employment, you did:

1. on 26 December 2018, when resident AA refused to move from where he was standing:
  - a. try to lift AA's fingers off the corridor rail he was holding on to by pulling them up
  - b. when AA let go of the rail, grab AA's left wrist
  - c. repeatedly pull AA forward by his wrist with force

- d. your conduct at 1.c. above contributed to AA falling backwards and landing on the floor
  - e. your conduct at 1.a. – c. above caused AA distress
2. on 26 December 2018 in relation to AA:
- a. put AA into a hoist on your own when two people were required
  - b. use force when putting AA into the hoist, including but not limited to tugging his leg up and pulling the sling
  - c. move AA over a distance of approximately 15–20 metres in the hoist
  - d. lower AA on to his bed from the hoist on your own when two people were required
  - e. your conduct at 2.b. above caused AA distress
  - f. your conduct at 2.a, c. and d. above was contrary to moving and handling procedure
3. on 26 December 2018, in relation to AA:
- a. roll AA on his bed on your own when two people were required
  - b. roll AA up against a wall and hold him there with one arm
  - c. remove your arm and let go of AA without attempting to control his roll back on to the bed
  - d. your conduct at 3.a. – c. above caused AA distress
4. on 26 December 2018, in relation to resident BB:
- a. say to BB, who had been incontinent of urine “oh for fuck sake you’ve pissed all over the floor” or words to that effect
  - b. when providing personal care to BB following the incident at 4.a, tut and sigh loudly
5. on or around 15 August 2020:
- a. when colleague VV asked you for help putting curlers in a resident CC’s hair, tell VV dismissively not to complete the task and that you would do it yourself, or words to that effect

- b. when VV asked if resident DD needed her pyjamas on, respond in a frustrated tone that you had already helped two other residents get dressed for bed, or words to that effect
  - c. ask VV sharply "what are you doing, I've already done that" or words to that effect when VV began a COVID clean that she was not aware you had already completed
  - d. when VV started writing up the daily contact sheets with you, throw your pen to the table, walk away and say in an angry tone "there's no point in both of us writing up daily contacts" or words to that effect
  - e. when VV asked you if the book you had started to write up was finished, turn around, come closer to VV's face and reply "no" in an intimidating tone
  - f. by acting as you did at 5.a. – e. above, intimidate VV
  - g. by acting as you did at 5.e. above, cause VV upset
6. on or around 15 August 2020, when resident EE sneezed, walk over to EE and say sharply to her "we are in a pandemic you know" or words to that effect

and in light of the above your fitness to practise is impaired because of your misconduct as set in allegations 1 – 6.

## **Findings of Fact**

The Panel had regard to the Statement of Facts for the Parties. The Panel noted that you accepted the facts proved in respect of allegation 2.a., 2.d. and 2.f. insofar as it relates to 2.a. and 2.d.

The Panel found the facts of allegation 1.b. (under deletion of the word "left"); allegation 1.c. (under deletion of the words "with force"); allegation 2.c. (under deletion of the words "of approximately 15-20 metres"); allegation 2.f.; allegation 3.a.; allegation 3.d. (under deletion of b. and c.); allegation 4.a.; allegation 5.a.; allegation 5.b.; allegation 5.c.; allegation 5.d.; allegation 5.e.; allegation 5.f. (under deletion of a., b., and c.); allegation 5.g., and allegation 6. proved.

## **Evidence considered**

The Panel considered the evidence contained in the bundle, the Statement of Facts for the Parties, together with the oral evidence. The Panel heard oral evidence from ZZ, YY, XX, WW, VV and you.

ZZ

ZZ is a [information redacted] with Angus Health and Social Care Partnership. She is currently [information redacted]. ZZ has been in the role for about three years. She has worked in care since she left school. The witness explained that she knew you, but you did not work together often, mostly seeing each other at handovers. ZZ explained that she had had no issues with your practice when she had worked with you other than on the occasion on 26 December 2018, which she came before the Panel to give evidence about. The issues on that shift concerned two services users.

When it was suggested to her that she was tired, late for work or distracted by her mobile phone on that occasion, she denied this.

In relation to the incident concerning AA she told the Panel that he had dementia and that although he did not speak a lot, when he did it usually involved swearing. He required to use a zimmer frame but would sometimes forget to do so.

On the day in question the witness was looking for AA as he was not in the lounge. The witness found him in another resident's room. AA had the zimmer frame with him. The witness was in the corridor and AA moved to the door and was responding to being coaxed by ZZ. AA then took hold of the railings on the wall. The witness thought it was with his right hand. You arrived and grabbed AA by the wrist. AA tried to get out of the grab. You used a bit of force and tugged his arm. You peeled his fingers from the railing. The witness described this as quite forceful although she could not say it was rough as she did not get a good look. The witness thought AA was getting agitated. The witness said you peeled AA's hands off the railing and pulled him by the wrist about five or six steps down the corridor. During this time, the witness said you were walking backwards. ZZ said she went behind AA as she was frightened that he would fall although she was not close enough to touch him. The witness said AA was swearing a lot. He was grabbed and pulled down the corridor. AA then let go and he fell in a controlled way down to the floor, sliding down ZZ's body. You were sighing and tutting.

When AA was on the floor you and the witness were beside him. You went to get the hoist and ZZ stayed with AA. ZZ did not remember if there was any conversation between you and her about the hoist. It would have been dangerous to lift AA without the hoist. The witness said you were quite rough in lifting AA's leg into the sling and supposed there would have been force. ZZ said you had lost patience. AA was raised in the hoist and the witness said that you then wheeled AA to his room. You were pulling the hoist backwards and the witness considered that this was dangerous. ZZ did not say anything to you. The witness said she did not say anything because she found you intimidating, and she thought she might make the situation worse. It was about 10 to 15 steps to AA's room. The witness said she found the matter upsetting and felt she should have said something.

She could not recollect if AA was soiled on his return to the room. AA was lowered on to the bed. AA would normally be assisted to the bathroom for toileting and changing and not changed lying on the bed. The bed was against the wall. You rolled AA to the wall and tried to remove his trousers while holding AA up with the other hand. When you pulled your hand away from AA he rolled back onto the bed. The witness described being shocked and confused. You did not ask the witness for any help, and she did not help you. She said she did not help because she did not wish to be involved as this was not how she was taught moving and handling. When you left, ZZ said AA seemed a bit upset and was quiet.

ZZ was then asked about service user BB. BB's mobility was not great, and she usually used a wheelchair. BB had issues with continence. The witness was with you in assisting getting BB ready for bed after tea. BB urinated on the floor while being changed. ZZ told the Panel that you said, "for fuck's sake you've peed all over the floor". The witness said she was shocked but tried to ignore it. She was not sure if BB heard the comment.

ZZ was referred to the witness statement she gave to the SSSC and to the statements she provided to her employer. To the extent there was any difference in her oral evidence and these written accounts the witness considered that her memory would have been better nearer the time of the incidents. The witness accepted that she had not provided much detail in her first account and that she gave a fuller account in response to questions she was asked by her employer XX.

Your version of events was put to this witness both by the SSSC and by your representative and the witness denied your account.

The witness was cross examined by your representative and asked questions by the Panel. In particular, it was suggested to the witness that you and she walked on each side of service user AA and that because of your [information redacted] AA had to be placed on to the floor. The witness denied this. ZZ was asked to explain why her initial statement had so little detail. She said that it was only when asked about the detail that she remembered it. ZZ told the Panel she had never had to prepare a statement before. The witness said that she did not consider your actions to be deliberate in causing AA to fall, you simply lost your grip. The witness was pressed about her apparent reluctance to be involved or to assist and she said this was because she did not wish to get involved in bad practice.

ZZ said that she felt you were rude and abrupt and that is why she did not challenge you.

ZZ had considerable difficulty in recollecting the events clearly in her oral evidence. This was particularly so when pressed for details such as which of AA's hands were on the handrail. It was clear that more detail had been

provided in the statement she gave to her employer in her interview in 2019 and the SSSC statement than she provided in the initial statement she provided. The Panel had some sympathy with a witness who was being asked to recollect events from a number of years ago and it was clear from the bundle that she had felt under considerable stress in giving evidence to her employer at the disciplinary hearing and then to the SSSC. The Panel considered that ZZ was a credible witness. She had no reason to fabricate any allegations against you. She had reported her concerns to her senior at the earliest opportunity. She was consistent and emphatic in all her accounts including before the Panel about the conduct which she considered was the most concerning, namely what the witness described as the grabbing and pulling of AA in the corridor. The Panel gave careful consideration to ZZ's various iterations of what occurred in reaching their view on the facts.

#### YY

YY is a [information redacted] and, in that role, she would oversee the whole of [information redacted]. She has been in that role for six years and has worked in care for a total of 14 years (with a total of eight years as a senior). YY knew you in a professional capacity and has worked with you for approximately six years. She was not your line manager. The witness said that she had no issues with you, but you had said at supervision that you did not like her and did not wish YY to be your supervisor as you thought she was unfair in the way in which she dealt with matters involving you.

YY spoke to the incidents, to the extent that she was aware of them, alleged to have occurred on 26 December 2018. In particular, YY described how ZZ had come to her in the office during the shift very upset and crying and saying, "its Lena". The witness thought that you might have taken ill as ZZ could not initially say anything else as she was so upset. YY said that ZZ told her she could not leave you with the residents while she went on her break. She said AA was dragged from a bedroom. ZZ also told her that one of the service users had been spoken to quite badly. The witness described ZZ as upset and angry. YY told ZZ to record the incident and report it to the manager.

YY said she went to the unit and there were no issues. She checked on the service users and they all appeared fine. YY did not speak to you about what had been said. YY then gave a statement during the investigation stage with your employer. The witness was referred to the interview and to the statement she gave to the SSSC and confirmed that they were a true and accurate account of her evidence.

YY was asked if she had any concerns about ZZ's presentation on the shift and she said that she did not.

The witness was asked about your practice and described you as "old school" and task rather than person-centred in your care.



The witness gave her evidence in a straightforward manner. She was not a direct witness to the alleged conduct although she was able to confirm that ZZ had had concerns on the shift which she reported, her upset at a what had occurred and the broad nature of those concerns. In particular her written account makes clear that ZZ told her that a service user had been sworn at by you although the precise words were not recorded and made specific reference to AA being grabbed and pulled along a corridor.

In the view of the Panel, YY was an entirely credible and reliable witness and showed no animosity to you although she understood that you did not like her. Her evidence gave support to that of ZZ.

### XX

XX is the [information redacted] at [information redacted]. She has been in that role for just over three years but has been a manager with Angus Council for 14 years. [Information redacted] provides care for up to 48 residents with a range of needs including those with high dependency and in the advanced stages of dementia. XX told the Panel about the needs of both AA and BB. XX knew you in the mid 1990's when she previously worked at [information redacted] and more recently in her current role. She has never been your direct line manager. XX had never worked on a shift with you but as part of her current role she would speak to residents and a range of staff in the various units and be aware of your work. She had no issues with you on a professional basis and had no concerns about you in your working relationships.

XX said that you have been [information redacted]. You had been [information redacted] following the alleged incident on 26 December 2018 and had returned to work in September 2019.

XX became aware of the allegations in December 2018 when she was approached on her return from annual leave by YY. XX could not remember exactly what was said but was told that ZZ would speak to her. ZZ did come to the office to speak to her and was quite emotional. The witness described what she was told by reference to the statement which was contained in the bundle which was a typed version of the written letter ZZ gave XX. What was alleged was that you had pulled the service user and he was resisting and that you had let go of his wrist and AA had gone to the floor. You had then got a hoist and were rough in placing AA into it and had then taken AA down the corridor in the hoist and put AA on his bed. XX said she was told that AA was distressed. AA had been pushed to the wall while on the bed to allow for personal care. The position of the witness was that AA could have been taken to the bathroom and need not have been changed on the bed.

XX spoke about resident BB. ZZ was not as upset by this incident, but she did say that you had said "for fuck sake she's pissing all over the floor".



XX was taken to each of the interviews in the bundle in which she took part as well as the two statements she gave to the SSSC and confirmed that these were a true and accurate account of her evidence.

XX was asked in particular about the suggestion that you peeled AA's fingers from the rail. This was not mentioned in ZZ's initial statement but was mentioned by XX in her interview with ZZ. The witness could not recollect how she became aware of this but rejected the suggestion that this was first raised by you. She told the Panel it was raised by ZZ, but she just could not remember when.

XX was referred to the manual handling information in the bundle and in particular confirmed that she had highlighted various passages for her own information. She considered that, having regard to these policies, AA should not have been transported in the hoist. The distance from the bedroom of one resident where AA was to his own room would have been about 15-20m and was too far to be safe. XX also took advice from WW who is a trainer on manual handling.

XX was also referred to your training records which were contained in the bundle.

In relation to the allegation in August 2020, XX was advised by a sessional member of staff that another sessional staff member had been upset on a shift with you and did not want to return to [information redacted]. XX spoke to the sessional worker (VV) when she got the opportunity although she could not recollect how long after the alleged conduct the conversation took place. XX said that VV had felt intimidated by you and that while it was not a concern during the whole shift there were times when you appeared frustrated and had thrown a pen down. It was also alleged that you had spoken to a service user inappropriately when she had sneezed. XX said that she was most concerned by the way the service user had allegedly been spoken to than the other matters.

After speaking to the sessional worker, she had taken advice from HR and been given a letter which you refused to take from her. It was suggested to the witness that she had said to you something along the lines of "here we go again" when presenting you with the letter. The witness could not recall if she had done so.

The witness was asked about the circumstances in which you might remove a service users' hands from the handrail, but XX was of the view that there would be no need to move AA if he wished to remain in the corridor.

The witness was defensive when asked questions by your representative. To the extent that she had knowledge of the actual allegations her evidence was hearsay and was merely reporting what she had been told by others. XX was however able to confirm the content of the investigation interviews which were in the bundle and which she took part in.

The Panel considered this witness to be credible and reliable. The Panel did agree with your representative that the witness did seem defensive in cross examination but in the view of the Panel this was not a basis upon which to consider her evidence was not reliable. The Panel did note that XX appeared to take the handwritten note of ZZ and type it verbatim and in the form in which it appears in the bundle. The next record of any discussion between ZZ and XX was the first investigation interview although they may have had a less formal discussion which was not recorded. The Panel noted that some of the questions in that interview might be regarded as leading and the Panel have been mindful to ensure that in making any findings in relation to the allegations that they carefully assess where it might be said that ZZ had been led by the questions (however inadvertent) of XX.

#### WW

WW has been a [information redacted] for 16 years and is the in-house trainer with Angus Health and Social Care Partnership. She is based at [information redacted] and is responsible for the manual handling training for all the employees there. To qualify for that role WW explained that she had to go through a rigorous training programme over a period of a week and pass an assessment at the end.

WW was asked about the various parts of the manual handling training referred to as modules A, B , C , D and E. WW explained that all staff are responsible for doing the training in respect of A and B each year. It is a theory-based online programme. Module C is concerned with chair moves, D with bed moves, and E with the equipment such as turning mats and hoists. That is done by assessment in person by WW of each employee at work.

WW knew you through work and had observed your practice. She had no concerns as to your practice in manual handling and had never had to stop you when carrying out such tasks. WW was able to confirm that you had completed the modules A and B in 2018 although C, D and E were not completed in that year but were in 2017.

WW said she had no knowledge of the allegations and she had not been made aware of them. XX had asked her to set out in writing how a body hoist ought to be used.

The witness was asked about the number of people required to roll a service user on a bed. This would depend on the service user's cognitive understanding. If a service user could understand instructions and had sufficient upper body strength, then one person would be enough. If someone was in the latter stages of dementia two would be required and this would be set out in the service user's manual handling assessment. In addition, a service user would not be allowed to roll back on a bed as this has the potential to be frightening for them.

WW was asked about the needs of AA which would have involved some elements of manual handling. Equipment would not usually be used but he would need assistance. AA would not have needed to be rolled on a bed according to this witness as he was able to make use of the bathroom. If he had been rolled that would have needed two people as he would be reluctant to accept help and was in the latter stages of dementia. AA was mobile and could get in and out of bed and move around freely in the unit.

In relation to the use of a hoist, WW said that this could not be done with one staff member and expressed the view it would be "illegal". It takes communication and teamwork to operate the hoist. WW explained in detail how the equipment should be operated. The hoist would never be used to cross a threshold between rooms and is rather used to transfer from the floor to a chair or to a bed for example. It would take physical effort to use.

WW was referred to various excerpts from a manual handling training book. She was clear that a service user would never be moved along a corridor in a hoist. It would be a risk to the service user. WW confirmed the truth and accuracy of the statement she gave to the SSSC.

WW was an entirely credible and reliable witness.

#### VV

VV is [information redacted] and a full-time [information redacted]. She has worked at [information redacted] since January 2020 undertaking two shifts per week and more during the summer period. On 15 August 2018, VV worked with you during a shift at [information redacted]. She had not worked with you before. Initially there were no issues but that changed in the course of the shift. VV did not report any issues to the manager but told a friend who was also a [information redacted] at Seaton Grove. She in turn reported the matter to XX who then spoke to VV about it. VV was asked to prepare a statement which she typed and gave to XX about a week after the shift. The witness was referred to that typed statement which was in the bundle.

VV said that you had been unhappy with the quality of the tea provided to residents. She described your demeanour. You were frustrated and did not appear to want to interact with VV. VV did not initially take matters personally although as the shift went on, she said you were dismissive of her, and she felt that she could do nothing right. VV had bathed a resident and you had asked her to put rollers in her hair. VV had never done this before and asked for your assistance. You took over the task and VV felt that she was not wanted and left the room. You were firm with her in insisting that you would do it. VV then asked you who she should help next in terms of getting service users ready for bed and asked about a particular resident. You told her you had already got a number of the residents ready and VV considered that you were effectively telling her you had done all the work. VV started to do the COVID-19 clean, and

you told her you had already done that. VV said you spoke in a harsh tone and the atmosphere was tense.

After the tea EE, one of the residents, sneezed and you asked VV if a tissue had been used. VV was not sure, but she thought perhaps it had. You went to the service user and told her there was a pandemic and suggested she cover her mouth when sneezing. VV thought this was an overreaction. You spoke sharply and the witness concluded that you were in a horrible mood.

Around 9pm you had started to fill in the contact sheets. VV said that she joined you after she had done the dishes and you then slammed the pen down and stated that there was no point in both of you doing it. You were angry and spoke harshly. VV left the room and when she came back asked you if you had finished with the contact book. You said "no" in an intentionally intimidating way leaning towards VV as you said it. VV said you were not right in her face but closer to it than was comfortable. She said that you were entirely aware of what you were doing when you leaned in towards her.

VV was upset, and you said to her that you were sorry for upsetting her and that you did not mean to speak harshly. You hugged her. You asked her if she had reported the matter to the office and VV told you she had not. The shift was fine after that. VV said she was content to leave matters and was not going to report the matter. VV was referred to her statement to the SSSC. VV said that she found when you leaned in to say "no" intimidating and she felt that you intended it to be so. Your position as to the events on that shift were put to VV but she did not agree.

VV was an entirely credible and reliable witness. She gave her evidence in a clear, open and straightforward manner. She had no reason to lie as she did not know you and indeed had no cause to exaggerate what occurred as she was clear she did not consider the matters to be sufficiently serious to report and she would not have done so without prompting.

#### Lena Gray

You gave evidence to the Panel and were asked questions in cross examination. You are [information redacted] years old and have been employed at [information redacted] for 27 years. You started in day care and have worked in the kitchen and as a domestic before becoming a Social Care Officer and latterly a Social Care Worker. You explained what happened during the shift on 26 December 2018.

ZZ took service user FF in a wheelchair to his room after teatime. You were called by ZZ as FF was unhappy because AA was in his room. ZZ was in the doorway and AA was just inside the door. AA was beside ZZ, and she must have had hold of him. The zimmer frame AA used was not there. You said that you assumed he had used the hospital table to move as it was upturned on FF's bed.

On the threshold of the door AA took hold of the handrail. He had his right hand on the rail, and you thought ZZ had his left hand. You were at the right-hand side and put your arm around his back and he took hold of the rail with his left hand. You asked ZZ to peel his hands off the rail. You said you had been trained to do that by moving the pinky finger and the rest move automatically, FF was still in the corridor. ZZ removed AA's fingers and you turned yourself around using both hands to act like a zimmer frame. You had AA by the wrists with his hands on top of yours and you walked back five or six steps. This allowed ZZ to wheel FF into his room. After that ZZ was at one side of AA and you at the other. You said you felt AA stiffen and you could feel the strain on your back. You suggested to ZZ that you lower AA to the ground which you did, and he was then sitting on the floor.

You said to ZZ that you needed to get the hoist as AA would not be able to pull himself up. You got the hoist. ZZ was positioned at AA's back, and you described in detail how you put the sling around AA. It is not easy to do. AA was not resisting or distressed. You had no recollection that he had tried to strike you. AA did swear though but this was his way of communicating. You expressed the view that it would be virtually impossible for one person to operate the hoist as one person operates the controls. You were pretty sure that ZZ had the control and raised AA from the floor.

You told the Panel and you said you told your boss that you had difficulty recollecting what occurred next but you did wheel AA in the hoist about 10 feet along the corridor and then a further 25 feet to his room. You were holding the swings and the frame. It is moved manually. You could not use the wheelchair as it had no seatbelt or footplate and so was not in your view suitable.

When you got to AA's room, he was heavily soiled and so he was lowered onto the bed from the hoist. You were beside the service user and ZZ used the control to lower it. You then described in detail how you carried out the personal care. You said that you did not roll AA. All that was required was to lift his buttock on one side. You did all the tidying up and put the hoist away. You described in detail how you met AA and your relationship with him.

You then told the Panel about BB. You and ZZ took BB in her wheelchair to her room to attend to her personal care. You stood her up and lowered her trousers. As you did so she began to urinate. You said to ZZ "oh god she's peeing". You asked ZZ to get items to clean BB. You said that you never swore, and you would never swear in front of a service user. You said that as "XX" said it was perhaps not "good values" but you never swore. When you were asked if you were tutting and sighing you said that you would have no reason to do so.

You were then asked about the allegation made by VV. You explained that you had never worked with her before this shift or since and you were not aware there were any problems on the shift. VV was a little emotional, but you had thought she was perhaps premenstrual. You acknowledged that you had been upset by the quality of the tea served as you felt the residents deserved better.

In relation to CC, you suggested to VV that she put rollers in CC's hair. You assumed she knew how to do it. They were falling out, so you suggested Velcro ones and you put in 3/4 rollers. You denied being dismissive of her. You queried where VV found the rollers she used.

You spoke about the discussion with VV in which she asked about residents that needed assistance with the bed routine. You said there was no need for you to be sharp with her and you are not sure how you were supposed to say that you had already attended to the service users and the COVID-19 clean.

In relation to the daily contact sheets, you could not remember clearly but you thought you had written in one. You denied slamming down the pen and being dismissive. You denied invading VV's personal space and you had no reason, even if you had been annoyed about the food, to take that out on VV. You denied apologising to her as you said you had nothing to apologise for and did not ask if she had reported anything to the office. You said if there had been any issues between you, you would have done so.

In relation to the allegation that you had spoken sharply to a service user when she sneezed, telling her there was a pandemic and she should cover her mouth, you denied speaking sharply or using the word "pandemic". Your job is to ensure their safety and that they cover their mouths when coughing and sneezing and you would remind service users. You would not use the word "pandemic" as you consider it would be frightening to service users. You consider that the sneeze incident relates to the same resident as the "curlers" matter.

You were cross examined. You were referred to the agreed statement of facts where you agreed that you had lowered AA on to the bed when in evidence you suggested it was ZZ. You said that you had lowered AA but that ZZ had operated the control. In relation to the putting of AA in the sling you said that you had done that, and ZZ had the control. You were asked whether you were aware of any reason why ZZ or VV would lie as you alleged. You could not think of a reason. You were clear however that you considered ZZ to be an unreliable witness who had said contradictory things. You were clear that you did not pull or grab AA and he was not yanked.

You were also referred to the statement that you gave to your employer. You were asked why you said AA was lashing out when you were clear in oral evidence that he was calm. You repeated that he was swearing but otherwise calm. You felt that you were a person-centred carer although there were a lot of tasks and it was essential they were done. You were asked about apparent inconsistencies in the oral evidence you gave today and the statement to your employer regarding AA being rolled in the bed and the absence of a reference to the way in which AA's hands were held in the corridor when speaking to your employer. You were clear in your oral evidence you had walked backwards four or five steps holding AA's wrists acting like a zimmer frame.



You did say that you considered that VV was in part at least lying. You considered that ZZ had been lying.

You were asked to describe your personality which you said was experienced. You explained that you have to come across as confident in the line of work and you would take the lead and offer advice.

The Panel considered that you were not a reliable witness. Your oral evidence was not consistent with the evidence you gave to your employer where you appeared to be more accepting of what had occurred. The Panel considered that you were evasive during cross examination. You gave very detailed and elaborate evidence about the use of the hoist for example or the changing of AA but did not respond to the questions that were being properly put to you about the inconsistencies in your evidence. In the view of the Panel there were at least some occasions when you were not credible. This was particularly so in relation to the way in which EE and BB were spoken to. Two witnesses, significant periods of time apart, have alleged that you spoke inappropriately to service users. The Panel considered it inherently unlikely that the two witnesses would lie having no apparent reason for doing so. They hardly knew you. You on the other hand did not deny entirely that there had been interaction with those service users at the time as alleged but sought to significantly downplay your role in what was said to them. The Panel accordingly had cause to have concern as to both your credibility and reliability.

#### Presenter's Submissions

The Presenter began by referring the Panel to Rule 18.3. and Rule 32.12. which provide that where facts are disputed the burden of proving those facts rests with the SSSC and they ought to lead evidence on them. The Panel should only find facts proved if they are established by the civil standard i.e., proved more likely to have happened than not.

The Presenter referred the Panel to the Statement of Facts for the Parties which was admitted under Rule 17.4. You admitted allegations 2.a., 2.d. and 2.f. insofar as it relates to 2.a. and d. The Presenter submitted that there was evidence to support the finding of facts in respect of each of the other allegations and to find each proved on the balance of probabilities.

The Presenter invited the Panel to find the witnesses on behalf of the SSSC credible and reliable. They all attended voluntarily to give evidence, and all gave evidence which was broadly consistent with earlier evidence they had given. The Presenter made reference to each of the witnesses in turn. The Presenter acknowledged there may have been lapses in the memory of ZZ when she was giving her oral evidence but that was understandable given how long ago the alleged incidents had occurred. None of the matters upon which she was less clear were serious enough to discredit her. She gave clear evidence in support of allegations 1., 2., 3. and 4. She was young, quiet and private and yet



had been willing to come forward. She did not really know you and had no reason to lie.

VV had never met you before her shift with you in August 2020. The witness was reasonable and considered in her approach and she was clear about why she had not originally reported the events on the shift. She was clear that your version was not true and VV did not waiver from that position.

There is, in the view of the Presenter, a pattern formed from 2 incidents where there had been alleged derogatory and intimidating conduct and although not analogous it is indicative of behaviour which had taken place over years. VV spoke to allegation 5. and 6.

YY was a credible and reliable witness. She was straightforward and her evidence lends weight to that of ZZ.

XX was a credible and reliable witness and although she could not recall the detail, she lends weight to the evidence of ZZ. She also spoke of her knowledge of AA and her view of AA's capacity and capabilities should be preferred.

WW spoke to the moving and handling procedures. She was not aware of the allegations and was presented with scenarios which she described as dangerous in parts or creating a fear factor in a service user. The witness was experienced and spoke freely and without hesitation. She was credible and reliable.

The position of the Presenter was that you were not a credible and reliable witness. Your oral evidence was confused and contradictory. Your evidence on certain specifics about the hoist, the roll on the bed and personal care are inconsistent with previous statements. You conceded that neither ZZ nor VV had reason to lie.

The Presenter submitted that the case for the Panel is essentially one of who they believe, and the Presenter invited the Panel to prefer the evidence of the witnesses on behalf of the SSSC.

The SSSC have in the view of the Presenter discharged the burden of proof on them and proved on balance of probabilities the facts alleged.

#### Submissions on your behalf

Your representative made submissions on your behalf. It was accepted that other than in relation to the allegations which have been admitted that the onus is on the SSSC, and the burden of proof is that on the balance of probabilities the facts have been established. It should be more probable than not that the facts occurred as alleged.

Your representative invited the Panel to find that the SSSC had not discharged the onus upon them to establish the facts on the balance of probabilities. In doing so your representative referred to the evidence of the witnesses.

In particular your representative referred to the evidence of ZZ which he said was central to the issues before the Panel. He pointed to various matters which he considered were inconsistencies in her evidence and differing accounts before the SSSC and earlier with your employer. Your representative submitted that these inconsistencies were significant and could not be explained by simply a lapse in recall over time or differing perspectives.

Your representative emphasised that YY attended at the unit after ZZ had gone to her and found no issues with the service users. If she had had any concerns as to the safety or wellbeing of service users, she would have taken the matter further that evening.

Your representative invited the Panel to regard the evidence of XX with some care. She was not a witness to any of the events and was essentially the investigating officer who had formed her own views as to what had occurred. The witness was hostile to your representative in cross examination without cause. Some of the evidence of ZZ had been influenced by the questions posed by XX during the investigation.

In relation to VV your representative submitted that much of what was alleged was down to the perception of the witness. Your representative submitted that the witness was not fully appreciative of the meaning of intimidation and that was not what had occurred.

Your representative invited the Panel to find you credible and reliable. You had been consistent and reliable in your position throughout the process.

Your representative invited the Panel to find that the allegations had not been proved on the balance of probabilities.

#### Panel's decision on findings in fact

The Panel had regard to the oral evidence of the witnesses, to the bundle, the Statement of Facts for the Parties and to the submissions made by the Parties.

The Panel noted the terms of the Statement of Facts for the Parties in which you admitted allegations 2.a, 2.d. and 2.f. insofar as it related to allegation 2.a. and 2.d.

The Panel found the following allegations proved:

- allegation 1.b. (under deletion of the word "left")
- Allegation 1.c. (under deletion of the words "with force")
- Allegation 2.c. (under deletion of the words "of approximately 15-20 metres")

- Allegation 2.f.
- Allegation 3.a.
- Allegation 3.d. (under deletion of "b. and c.")
- Allegation 4.a.
- Allegation 5.a.
- Allegation 5.b.
- Allegation 5.c.
- Allegation 5.d.
- Allegation 5.e.
- Allegation 5.f. (under deletion of "a., b., and c.")
- Allegation 5.g.
- Allegation 6.

In broad terms the Panel found the witnesses on behalf of the SSSC to be credible and in the main reliable in their evidence. It was clear that ZZ did have some difficulty in recollecting the details of what occurred in December 2018 but in the view of the Panel this was understandable given the passage of time and the apparent [information redacted] which the process both before the employer and the SSSC has put her under. Nevertheless, the Panel was clear that the witness was unwavering on the matters which the witness herself had more concern about which involved what she described as the grabbing and pulling of AA and the swearing at BB.

The Panel was reminded that the findings in fact and assessment of the credibility and reliability of the witnesses were matters for the Panel.

In broad terms the Panel noted that your position was that the allegations were untrue and that the witnesses and in particular ZZ and VV were not truthful. The Panel do not agree. Neither individual was particularly known to you. You were unaware of any reason why they would seek to fabricate allegations against you. They would not appear to have been known to each other. The allegations are a considerable period of time apart. VV was not particularly inclined to report the matter as she felt the issues had been addressed. However, when asked to set out her position she did not and has not wavered from that view. In the view of the Panel, it was unlikely that two individuals at different times would fabricate allegations against you and that rather it was more likely that you had sought before the Panel to play down your own actions at the expense of accusing others of dishonesty. Having said that the Panel are mindful that the burden rests with the SSSC and the Panel must be satisfied that the allegations have been proved on the balance of probabilities.

In relation to allegation 1.a., the Panel did not consider this allegation proved. It was apparent that the first mention of fingers being lifted from the handrail (at least from the papers in the bundle) came from you during your interview with the employer. ZZ did not mention this in her initial statement, and it was clear that it was in fact XX in her interview with ZZ that asks a question of ZZ which includes reference to fingers being removed from the handrail.

The Panel did carefully consider where it could be said that ZZ's evidence had been influenced by the questions she was asked by XX or the SSSC. While there is no suggestion that she was lying when responding to questions she was asked, in the view of the Panel it could not be said on the balance of probability that the facts in allegation 1.a. occurred when evidence of this was not provided by ZZ spontaneously and absent it being raised with her in the form of a question.

In relation to allegation 1.b. ZZ has consistently and from the beginning raised concern that you grabbed AA's arm or wrist. She has not deviated from that position. It was what she told YY immediately after the incident and her employer in writing and at interview. The evidence was not sufficiently clear in the view of the Panel as to which wrist it was and so the Panel have deleted reference to the left wrist from the allegation.

In relation to allegation 1.c. again ZZ has been consistent in her position in this regard that AA was pulled both in evidence to her employer, in the investigation, to YY and to the SSSC. She was also clear in her oral evidence to the Panel as she expressed the view it gave her most cause for concern. You had denied this before the Panel but before your employer acknowledged that it may have looked like you had "yanked AA" but you did not. The Panel considered the evidence of ZZ to be clear and unequivocal on this matter. The Panel gave careful consideration to the issue of force. ZZ did not initially allege the use of force and in the view of the Panel the question as to whether force of any kind was used appeared to have been introduced by the SSSC when asking ZZ about the incident. The Panel was not therefore satisfied that that aspect had been proved on the balance of probabilities and the words "with force" should be deleted from the allegation as proved.

In relation to allegation 1.d. the Panel did not consider that there was sufficient evidence to support such an allegation. If indeed there had been force used to pull AA along the corridor and this has caused him to fall it might have been expected that he would have fallen to the ground. In fact, both ZZ and you are clear that however the service user came to be on the floor the service user did not "fall" or "land" but in fact slid or was lowered in some way to the ground.

In relation to allegation 1.e. while the Panel prefers the evidence of ZZ that AA was shouting and swearing (and indeed you told the employer AA was swearing which was in contrast to your oral evidence) it was not clear on the evidence the cause of that distress and it could not properly be said that it arose from the conduct in allegation 1.c. Allegation 1.e. is accordingly not proved.

In relation to allegation 2. you admit allegation 2.a., 2.d. and 2.f. as far as it relates to 2.a. and 2.d. In relation to allegation 2.b. the Panel was not satisfied on the balance of probabilities that force had been used. It was clear from the evidence of WW that it is not an easy task and does require some physical effort to place a service user in a hoist. It was also apparent that ZZ considered that you had been rough with AA. However, the allegation is that force was used.

Once again, the issue of force appears to have been introduced to ZZ in the questioning by the SSSC about the use of the hoist and as such the Panel on balance are not satisfied that force was used.

In relation to allegation 2.c. it was not in fact disputed by you that you moved AA in the hoist a distance down a corridor and around a corner and into his bedroom. The issue appeared to be as to the distance involved. The Panel could not make an assessment on the evidence as to the distance. XX spoke about the distance but that appeared to be from one service users' room to another and it was not entirely clear how far AA had travelled away from the bedroom before he came to rest on the floor. As such the reference to the distance ought to be deleted on the basis that what is clear from the evidence of WW that AA should not have been moved at all in this manner. The hoist is for transitions and not for movement along corridors or across thresholds. You appeared to accept this.

In relation to allegation 2.e. as the Panel did not find allegation 2.b. proved they could not find allegation 2.e. proved. In relation to allegation 2.f. it was clear from the evidence of WW that any movement along the corridor and across thresholds in a hoist was contrary to moving and handling policy.

In relation to allegation 3.a. the Panel did note that there is no mention of AA being rolled in the initial statement of ZZ. In the view of the Panel this was because it was not the matter of most pressing concern to her. She gave more detail evidence to XX about AA being rolled on the bed to be changed. Although you sought in your oral evidence to say that you did not roll AA what you described did in fact appear to be a roll of AA away from you towards the wall. You told your employer you rolled AA. You were clear that any action to change AA on the bed was done by you alone. In the view of the Panel this allegation was proved. The Panel also accepted the evidence that AA should not have needed to be changed on a bed as he could have been taken to the bathroom for personal care and that he was not likely to have been changed in this manner before.

In relation to allegation 3.b. the Panel could not be satisfied on balance that AA had been rolled against the wall as opposed to simply towards it and away from you. The reference to being against the wall only appeared in ZZ's statement to the SSSC. This allegation is not proved.

In relation to allegation 3.c. the Panel did not consider there was sufficient evidence to support this allegation.

In relation to allegation 3.d. this would be limited to consideration as to whether the action in 3.a. caused distress. ZZ said that AA was distressed. Given that AA was not normally provided with personal care in this fashion the Panel considered that it was probable that he would have been distressed by this. The Panel accordingly accepted the evidence of ZZ.

In relation to allegation 4.a. the evidence of ZZ initially was to say that you had been rude, but she did not provide further detail. She did however tell YY on the same evening that you had sworn at BB. ZZ then told XX in interview the precise words used, and she has remained consistent in that position. You accepted that you did say something to BB or in her presence and which may not have been appropriate but that you did not swear. The Panel accepted the evidence of ZZ which is supported by the evidence of YY that you did swear. The Panel consider the allegation 4.a. proved.

In relation to allegation 4.b. the evidence for this allegation was less clear. You said you were in the corridor and ZZ was not clear about this in her oral evidence. The Panel was of the view that this was because ZZ did not consider it sufficiently important that it remained in her memory. In any event this allegation is not proved on the balance of probabilities.

In relation to allegation 5.a.-5.e., the Panel accepted the evidence of VV in its entirety. These allegations are found proved. The Panel was clear that VV would not have reported these incidents as she was prepared to accept your apology and to consider it an isolated shift. She may have reported it if the conduct had been repeated on another shift. It was clear that you accepted that the incidents happened but that you had a different view as to the manner in which certain things were said. VV was very clear as to how she was spoken to and was in agreement with your representative that the conduct alleged in allegations 5.a.-5.c. were not intimidating although she was made to feel uncomfortable and that she could do nothing right. In relation to allegation 5.d. and 5.e. however, VV was very clear that you were intimidating and in relation to allegation 5.e. that you were intentionally so. VV said that you had leaned towards her when you spoke, and she was clear that you knew exactly what you were doing. It is worth noting that ZZ also said that the reason she did not say anything to you during the incident with AA was that she too found you to be intimidating which lends some support to the conduct alleged by VV. As such the Panel found allegation 5.f. under deletion of the reference to 5.a., 5.b. and 5.c. proved.

It was also clear in accepting the evidence of VV that she was caused upset by your actions in allegation 5.e. and as such allegation 5.g. is also found proved.

In relation to allegation 6. VV also gave evidence in relation to this allegation. The Panel was clear as you used the resident's first name that this was in relation to the resident referred to as EE. Your position was that you would not have used the word pandemic and did not speak sharply. You had a duty to make sure residents covered their mouth when sneezing and coughing. The allegation says that the words "pandemic" or words to that effect may have been used. What is clear to the Panel was that EE was spoken to by you about sneezing and the Panel prefer the evidence of VV as to how you spoke to the service user. The Panel was of the view she was spoken to sharply and as such this allegation is found proved.



## Impairment

You were asked if you admitted that your fitness to practise was impaired. You did not.

No additional witness evidence was led by your representative on your behalf or by the Presenter. The Presenter did provide an additional bundle of papers which had already been disclosed to you.

The Panel accordingly proceeded to hear submissions from the Presenter and your representative in relation to impairment.

### Presenter's submissions

The Presenter began by referring the Panel to the documents in the bundle produced for the purposes of the impairment stage. These included additional information about training and some supervision records. There were no supervision records after 2019.

The Presenter referred the Panel to regulation 2.2 on the meaning of fitness to practice and impairment and submitted that you were impaired by reason of misconduct. The Panel was also referred to the decisions guidance and to Rule 36. The Presenter said that in the event that the Panel do not consider your fitness to be currently impaired they ought to dismiss the case.

The Presenter addressed three issues in her submissions, namely first, the reasons why the allegations amount to misconduct; secondly the relevant case law on impairment and thirdly the terms of the Decisions Guidance.

In relation to the allegations, the Presenter submitted that this conduct amounts to misconduct. Misconduct is not defined in the Rules. The Panel was referred to the case of *Roylance v GMC* in relation to the meaning of misconduct. It is a matter for the Panel based on their skill and judgment and in light of the evidence presented to them.

The Presenter submitted that the conduct on the shift in December 2018 was in the view of the SSSC neglectful rather than targeted or deliberate. There was no evidence that the shift was any more difficult than any other and there was a risk of harm given that you appeared unable to control your reactions when frustrated. In relation to the allegations the Presenter submitted that you were in breach of multiple parts of the relevant Code being parts 1.1; 1.2; 1.4; 2.2; 2.4; 3.10; 5.1; 5.3; 5.7; 6.1 and 6.5. The conduct found established is of moderate seriousness and amounts to misconduct.

The Panel must consider if you are currently impaired. The Panel was referred to the case of *Cohen v GMC* and in particular invited to consider whether the conduct is remediable, has been remediated and the likelihood of repetition. The Panel was referred to the mitigating and aggravating factors in the decisions



guidance. The Panel was also referred to the case of *Meadow V GMC* which requires a Panel to look forward rather than back. However, in order to form a view on current impairment account should be taken of the way a worker has acted in the past. The Panel was also referred to the case of *Council for Healthcare Regulatory Professionals v NMC and Grant* which requires the Panel to consider the public interest and public protection in addition to the considerations in *Cohen*.

The Presenter also referred the Panel to the factors set out in the Decisions Guidance and to the mitigating and aggravating factors. The lack of insight, regret and apology in respect of most of the allegations made this an aggravating factor. The circumstances which led to the behaviour was aggravating as you were experienced and trained. The length of time since the conduct was aggravating as a further allegation was established after the incident in 2018. The fact that the conduct was within work was aggravating. The Presenter submitted that there was a pattern of behaviour and that this was an aggravating factor. Distress was caused and the conduct constituted a breach of trust which would also be regarded as aggravating factors. There was no evidence that you had concealed wrongdoing. There were also mitigating factors in that you had fully cooperated with the SSSC, there was no duress, and you had a long history working in care with no issues.

The Presenter submitted that the Panel was entitled to conclude that some of the conduct involving moving and handling could be remediated but that other aspects of the conduct were attitudinal in nature and were harder to remediate. The conduct as regards moving and handling has been remediated. Training had been undertaken and there had been no further incidents of that nature since 2018. The other conduct had not been remediated. As such there is a risk of repetition. Insufficient insight had been demonstrated. The evidence before the Panel was not sufficient to show that there had been sufficient insight. The Presenter submitted that insight was of particular significance in regulatory proceedings and referred the Panel to the case of *R (Bevan) v GMC* and *GMC v Khetyar*.

The Presenter submitted that it was in the public interest to make a finding of current impairment. It would damage the reputation of the profession and the high standing in which the profession is held if the conduct was not marked in this way.

In summary, the Presenter submitted that your fitness to practise is currently impaired.

#### Submissions on your behalf

Your position is that your fitness to practise is not currently impaired. Your representative submitted that there was no additional evidence beyond the allegations which would support a finding of current impairment.

You have been a care worker for 27 years. Other than the current allegations you have no disciplinary record at work and have never been involved with the SSSC. These are two incidents in the thousands of shifts you have undertaken. Your representative suggested that the Panel consider the youth and relevant inexperience of your co-workers a factor. ZZ took a passive role in events. You relied on your colleagues to support you in the role in a busy workplace. You worked the two shifts concerned with little support.

In relation to the incident in August 2020, your representative submitted that this shift took place in the middle of the COVID-19 pandemic and there was a high level of concern among staff and they were under a degree of pressure. While you deny what happened you accept the decision of the Panel.

Your representative referred the Panel to the Decisions Guidance and to the factors in section 8. In relation to insight, regret and apology you had taken steps to undertake all the training offered to you. You were entitled to deny the allegations. You had no previous history of misconduct. Your behaviour was spontaneous and there was a lack of support from other staff. Your representative invited the Panel to reject the position of the SSSC that there was a pattern of behaviour. They are two entirely unconnected incidents. One was potentially dangerous to a service user and you accept that.

Your representative submitted that the Panel should not be satisfied that your fitness to practise is currently impaired.

#### Panel's Decision on Impairment

The Panel in all the circumstances find that your fitness to practise is impaired by reason of misconduct in respect of the allegations that had been admitted or proved except in relation to allegations 5.a.-5.d., and 5.f. insofar as it refers to 5.d.

The Panel gave careful consideration as to your fitness to practise.

The Panel in all the circumstances find that your fitness to practise was impaired by reason of misconduct in relation to at least some of the allegations.

In reaching their decision the Panel had regard to the bundle, the oral evidence, case law, Decisions Guidance and the submissions of the Presenter and your representative. The Panel had regard to Rule 2. as to the meaning of fitness to practice and impairment. The Panel noted that a worker is fit to practise if they meet the standards of character, conduct and competence necessary for them to do their job safely and effectively with particular regard to the codes.

In terms of Rule 2., your fitness to practise may be impaired on one or more grounds including misconduct. The Panel had regard to the case of *Roylance v GMC*. In the view of the Panel the conduct needed to be sufficiently serious to amount to professional misconduct which would justify a finding of misconduct

before a professional regulator. The Panel did not consider that that the conduct found proved in respect of allegations 5.a.-5.d. should be considered misconduct. That is not to diminish how your conduct made VV feel or to give the impression that such conduct in a workplace and with colleagues is appropriate. VV herself did not feel the conduct was sufficiently of concern to her to initiate a report and while the Panel consider that it is entirely appropriate for the conduct to be investigated by your employer the Panel did not consider that such conduct amounted to misconduct. As such allegations 5.a.-5.d. were not further considered in relation to whether you are currently impaired in your fitness to practise. The remaining allegations to which VV gave evidence do in the view of the Panel amount to misconduct. All of the remaining allegations admitted or found proved do amount to misconduct.

The Panel considered that there was physical abuse of a service user in the manner in which AA was grabbed and pulled. You failed to show respect and maintain the dignity of AA in the way he was moved down the corridor, transported along the corridor in the hoist and when his personal care was attended to on the bed. You spoke to BB and EE in a manner which was inappropriate. AA, BB and EE were vulnerable to your actions. While the Panel did not consider that your conduct was malicious or deliberate you appeared rushed and frustrated and this resulted in the abuse and neglect of those service users. Your intimidation of VV was also harmful to her and showed a failure to respect colleagues. The service users place trust in you to care for them and on the occasion of 26 December 2018 and when speaking to EE you abused that trust.

The Panel considered that the conduct constituted breaches of Parts 1.2; 1.4; 2.2; 3.10; 5.1; 5.3; 5.7; 5.8; 6.1 and 6.5 of the Code.

The Panel went on to consider whether your fitness to practise is currently impaired as at today's date.

The Panel considered that the conduct was moderately serious. It was not trivial but nor was the conduct very or extremely serious. The Panel did not consider the behaviour to be malicious and it was isolated to two occasions a significant period apart in time. While the Panel did not consider the conduct to be deliberate, in the view of the Panel it did display an attitude in which there was a need on your part to get tasks done and that that appeared to be at the expense of the wellbeing of service users and colleagues.

The Panel did not agree with the submission made on your behalf that the relative inexperience of your colleagues on the two occasions in some part contributed to your conduct. You were, in the view of the Panel, responsible for the handling of AA in the manner found proved and in speaking to service users and colleagues inappropriately. Your suggestion that others had somehow contributed indicated a lack of awareness as your own actions.

The Panel had regard to the mitigating and aggravating factors identified in the Decisions Guidance.

The Decisions Guidance indicates that insight might be shown where a worker apologises at an early stage, admits the facts, accepts that they ought to have behaved differently and shows reflection, understanding and empathy. Insight is a significant factor as it is important that a worker is able to take a step back, to look at their own conduct with a self-critical eye, acknowledge fault, apologise and demonstrate that the conduct will not occur again. This may involve explaining what they might do differently in the future.

In relation to insight, regret and apology the Panel noted that you have undertaken training as regards manual handling. Indeed, you admitted certain failings in manual handling at an early stage. However, you continue to deny the other allegations and as such there has been no insight regret or apology in respect of those other matters. The Panel noted that even in respect of the issues regarding manual handling you did not express any understanding as to how AA may have felt about being transported in the hoist or the risk you placed him in. The Panel however do accept that you understand that you should not have done it.

In relation to your previous history the Panel noted that you have had a long career in care and with no issues until the shift in December 2018. This is a significant mitigating factor.

The Panel gave careful consideration to the circumstances leading up to the behaviour. The Panel did not hear any evidence that would suggest the shift was particularly unusual or that anything occurred on either of the dates that would have led to any of the conduct. You are an experienced worker who is trained in the role. The Panel accept that your actions were in no way premeditated and appeared rather to be a response to incidents as events unfolded. Even if you felt that there was a lack of support from colleagues that would not explain your conduct. This would appear to be an aggravating factor.

The Panel noted that there has been a significant period of time since the alleged conduct although you have not always been at work during the time which has passed in order to allow you to evidence good practice. The Panel noted that WW had never had any issues with the manual handling carried out by you which she witnessed, and XX said that there were no issues with your practice beyond these allegations. You did not provide any written testimonials as to your good practice in recent times. The Panel consider therefore that this is a neutral factor.

The conduct occurred inside the workplace. The Panel consider this to be a neutral factor.

The Panel had regard to your cooperation with the SSSC. It was to your considerable credit that you have cooperated at every stage of the process

(which has been long) and attended this hearing over a number of days and took an active part. You have shown commitment to being a registered worker.

The Panel considered that the conduct did not amount to a pattern of behaviour. They were distinct matters and although an analogy might be drawn concerning the manner in which service users were spoken to the Panel did not consider this to be pattern. The conduct amounted to separate incidents on distinct dates some time apart.

It was clear from the evidence that in relation to AA the impact on him had not been long term although he was apparently distressed at the time of the incident involving being rolled in the bed, understandably so. VV was also upset. There was in the view of the Panel a risk of harm to AA and emotional harm to all three service users.

The Panel considered that there had been an abuse of trust in relation to the care of AA who was vulnerable in the need for personal care.

There was no suggestion of duress or concealing of wrongdoing.

The Panel gave careful thought to whether the conduct could be remediated, had been remediated and the likelihood of repetition.

In relation to allegations the Panel considered that it was possible for the conduct to be remediated although it was acknowledged that that is more difficult when the conduct is more attitudinal in nature and appeared to be borne out of frustration or a desire for tasks to be completed quickly.

In relation to whether the conduct had been remediated the Panel noted that you had carried out the necessary manual handling training and were clearly aware of what you ought to have done in relation to the use of the hoist with AA.

However, the Panel could not be satisfied that you had shown sufficient insight into the conduct and in particular you had not shown sufficient reflection on the conduct from AA's perspective and the impact of the conduct on AA or indeed on the other service users and colleagues. It was apparent to the Panel that although your conduct was not malicious you appear unaware of how you come across to others. You made a series of poor decisions involving AA from grabbing and pulling him (when he could have remained in situ) which in turn placed him in a situation where a hoist was needed to lift him from the floor. You then made a further poor decision to transport AA in the hoist and having done so required to place him on the bed which would otherwise have been unnecessary. The Panel did not consider that you had shown sufficient reflection as to how the circumstances which gave rise to the allegations could have been avoided. Accordingly, although the conduct was remediable the Panel did not consider that the conduct had been sufficiently remediated. On that basis the Panel did not consider that they could say that the risk of repetition was low.

The Panel accordingly acknowledge that, while there are significant mitigating factors, the Panel was of the view that a finding of impairment was necessary to protect the public. The conduct involving AA was serious and there had not been sufficient remediation and insight shown by you to satisfy the Panel that the conduct would not be repeated. The Panel also considered that there was a public interest in making a finding in the circumstances with a view to upholding standards in the profession, confidence in the profession and the SSSC as regulator.

This was a finely balanced decision and the Panel acknowledge the length of your career in care and the period of time which has passed since the initial conduct occurred. Nonetheless, the Panel do consider, for the reasons set out, that you are currently impaired on the grounds of misconduct.

### **Sanction**

In light of the Panel's findings on impairment of fitness to practice, the Panel went on to consider mitigation and sanction.

The Presenter did not lead any further evidence or call any further witnesses. Your representative did not lead any further evidence or call any further witnesses.

The Panel heard submissions from the parties.

#### Presenter's submissions

The Presenter invited the Panel to impose conditions and a warning.

The Presenter invited the Panel to have regard to Rule 20 in considering sanction. The Presenter referred the Panel to Rule 20.9. There is a degree of overlap between this stage and the impairment stage. The Panel must have regard to the evidence, the seriousness of the impairment, the protection of the public, the public interest in maintaining confidence in social services and the issue of proportionality. The Presenter also referred the Panel to the Decisions Guidance. The sanction is not intended to be punitive but may be punitive in its effect. The Panel are required to undertake a balancing exercise.

The Presenter submitted that the Panel should have regard to any mitigating and aggravating factors in reaching their decision.

The Presenter noted that the conduct was found to be moderately serious. There was a pattern of poor decisions and that as a consequence a service user had been neglected and a colleague intimidated. You had physically abused a service user and shown a lack of respect towards them. Your conduct with AA, BB and EE was inappropriate.



The Presenter referred the Panel to the Decisions Guidance. In relation to section 6.1 in considering the protection of the public when making a decision, the Panel must make sure that a worker does not have the opportunity to repeat the behaviour. While there is a risk of harm and a lack of reflection on your conduct the Presenter submitted that the risk was not pervasive or very serious. In relation to section 6.2 in upholding the public interest, the Presenter noted that the Panel had found 10 parts of the Code had been breached. The public interest accordingly requires to be addressed.

The decision of the Panel must be proportionate which requires a balancing exercise to be undertaken between your interests and the interests of the wider public. The Panel must also consider the mitigating and aggravating factors. The aggravating factors found by the Panel included a lack of insight, an abuse of trust and risk of harm.

The options available to the Panel are set out in section 13 of the Decisions Guidance. The Panel must consider the least restrictive outcome first and work upwards until they reach the least restrictive decision that adequately addresses the behaviour.

The Presenter submitted that an outcome of “no further action” would not be appropriate. Actions needs to be taken given the risk of repetition and lack of insight identified. The Presenter submitted that, given that the conduct was not widespread or of the utmost seriousness, that a warning on your Registration for a period of two or three years would be appropriate. A warning alone would not address the public interest and public protection concerns.

The Presenter submitted that conditions should also be imposed on your registration. Detailed guidance on conditions is set out in section 8 of the Decisions Guidance. A period of retraining and supervision would be appropriate. The issues arising from manual handling have already been addressed. The underlying values issues are not deep seated and could be addressed with reflection.

The conditions must be workable and enforceable. Your employer has supported you before and could do so again. The Presenter prepared proposed conditions to be considered by the Panel. These are in the following terms:

1. Within seven days of this condition coming into effect, or within 7 days of you commencing any future role which requires SSSC registration on the part of the register for Support Workers in a Care Home Service for Adults, you must provide evidence to the SSSC, countersigned by your employer, to confirm that they are aware of these conditions on your Registration.
2. Within three months of this condition coming into effect, you must provide the SSSC with evidence, countersigned by your employer, that you have undertaken training that covers:



- Adult Support and Protection
- Providing dignified and respectful care to service users
- Effective communication with service users and colleagues, which includes the areas of respect, dignity, emotional regulation and conflict resolution.

You should discuss with your employer the most effective way to complete this training. It can be in the form of face to face or online training, mentoring, supervision and/or independent study. See the guidance notes attached to your letter for more information.

3. Within three months of completing the training in condition 2. above, you must submit a reflective account to the SSSC. Your reflective account must be to the satisfaction of the SSSC and must specifically explain:
  - a. how to communicate in ways that help service users and colleagues to feel safe and valued and that respects and maintains their dignity
  - b. how to challenge your own attitudes and behaviour so that that they do not contribute to situations or behaviour that may be harmful or abusive
  - c. how to recognise and handle tensions or conflicts between your own values and those of individual service users or colleagues
  - d. your awareness of the triggers for your feelings of anger and personal frustration
  - e. your personal coping strategies for dealing with feelings of anger and personal frustration and how you have applied these strategies
  - f. the potential impact of your behaviour on others
  - g. your responsibility as a social service worker to model appropriate behaviour and values
  - h. how the SSSC can be assured that you will not repeat the behaviour you demonstrated.

4. For a period of twelve months from the date this condition comes into effect, you must engage in formal supervision with your employer at least every six weeks.

During the course of each supervision session, you must discuss how you have put your learning from the training in condition 2. into practice, including how you are consistently demonstrating your ability to provide safe, respectful and dignified care to service users and your ability to communicate effectively with both service users and colleagues on a day-to-day basis.

5. You must submit a formal record of each supervision session, countersigned by your employer, to the SSSC's Fitness to Practise department within two weeks of each supervision session taking place.
6. For a period of twelve months from the date this condition comes into effect, you must notify the SSSC within 7 days of any changes to your employment status, including any new or additional role you enter which requires SSSC registration on the part of the Register for Support Workers in a Care Home Service for Adults.

The sanction is a matter for the Panel and as such it is for the Panel to be satisfied that another sanction up the scale is appropriate. The Presenter submitted that the SSSC did not consider any sanction further up the scale to be appropriate or proportionate.

#### Submissions on your behalf

Your representative submitted that the Panel should be mindful that the conditions proposed by the SSSC constituted an offer formulated before certain of the facts were not found proved.

You accept that from the point of view of the public interest that you have fallen below the standards expected and you have accepted that in parts from the outset. While you appreciate that a significant aspect of the decision relates to a lack of insight and reflection your position on the facts remains. You do however accept the decision of the Panel and any reflection you would provide would reflect your position. Your representative made clear to the Panel the significant impact this matter had had on you on a daily basis and the support you are accessing in relation to your [information redacted] around these issues.

You have worked in the care sector for 27 years and you have never been subject to any disciplinary proceedings except in relation to these allegations.

Your position is that you consider a warning would address the concerns and you would undertake the necessary training in any event.

### Decision

The Panel decided to impose a warning and to direct that a record of the warning be placed on your entry in the Register for a period of one year and to impose conditions on your Registration.

### Reasons for the Panel Decision

In reaching its decision the Panel had regard to the submissions of the Parties, the case law, and the factors referred to in Rule 20.9., namely:

- The evidence presented by the Parties
- The seriousness of your impairment of fitness to practice
- The protection of the public
- The public interest in maintaining confidence in social services
- The issue of proportionality.

The Panel took into account the Decisions Guidance. The Panel kept in mind that any sanction required to be appropriate and proportionate. The decision on sanction was a matter for the Panel exercising their skilled judgement. The Panel recognised that any sanction imposed was not intended to be punitive in its effect although it might have such consequences.

The Panel considered the question of sanction. The Panel started with a consideration of the least restrictive outcome. The Panel took account of the possible outcomes as set out in Rule 20.2, paragraph 13.2 and section 15 in relation to conditions in the Decisions Guidance.

The Panel considered that:

- It was not appropriate that no further action was taken. It was necessary that action be taken to protect the public and in the public interest. The Panel do not consider that there are exceptional circumstances to justify a decision to take no further action.
- The Panel considered that a warning was appropriate in the circumstances. The conduct was of moderate seriousness. In a lengthy career these had been the only incidents. They did not represent a pattern of conduct. The conduct as regards the breaches of moving and handling procedures has been addressed. However, given the numerous breaches of the code in relation to the treatment of service users and a colleague the conduct did require to be marked by a warning. The Panel

considered that given the initial allegation occurred on a shift in 2018 and that matters had been ongoing for you since then that a period of one year was a sufficient period for any warning on your Registration.

- The Panel did consider carefully whether a warning was sufficient to address the conduct in the circumstances. The Panel was mindful that they required to act in a proportionate way in reaching their decision. The Panel did not consider that a warning by itself was appropriate or sufficient in respect of the allegations. A warning would not in particular address the public protection or public interest concerns.
- The Panel considered the imposition of conditions. The Panel took the view that conditions would be appropriate to address the public protection and public interest concerns arising in respect of the allegations. In particular the Panel considered that you had failed to show sufficient insight into your failings and the effect of these failings on vulnerable services users and a colleague. The Panel considered that appropriate conditions can be framed to address these failings as well as ensuring a better understanding by you of the impact on service users and colleagues.
- The Panel considered that insight into the conduct and its effect could be improved by a period of appropriate training and supervision. You maintained throughout the hearing that you would be willing to undertake additional training in Adult Support and Protection. The Panel therefore consider that there is potential for you to respond positively to additional training and supervision. The Panel noted that the SSSC had proposed in addition that you prepare a reflective account. In all the circumstances the Panel did not consider that this would be helpful in leading to the necessary improvements and that you would gain better insight from the training and supervision proposed.
- The Panel was of the view that the imposition of conditions was sufficient to satisfy the public protection concerns and that in the circumstances the public would be satisfied that appropriate steps had been taken and the public interest concerns had been addressed. The imposition of conditions was proportionate.

#### Proposed conditions

The conditions the Panel is minded to impose on your Registration are as follows:

1. Within three months of returning to work with an employer in a registrable role, you must provide the SSSC with evidence, countersigned by your employer, that you have undertaken training that covers:
  - Adult Support and Protection
  - Providing dignified and respectful care to service users

- Effective communication with service users and colleagues, which includes the areas of respect, dignity, emotional regulation and conflict resolution.

You should discuss with your employer the most effective way to complete this training. It can be in the form of face to face or online training, mentoring, supervision and/or independent study.

2. For a period of twelve months from the date of your return to employment in a registrable role, you must engage in formal supervision with your employer at least every six weeks.

During the course of each supervision session, you must discuss how you have put your learning from the training in condition 1. into practice, including how you are consistently demonstrating your ability to provide safe, respectful and dignified care to service users and your ability to communicate effectively with both service users and colleagues on a day-to-day basis.

3. You must submit a formal record of each supervision session, countersigned by your employer, to the SSSC's Fitness to Practise department within two weeks of each supervision session taking place.

The Panel had regard to Rule 21. As you were present and the Parties agreed, the Panel advised the Parties as to the proposed conditions and adjourned the hearing for a reasonable period of time to allow the Parties an opportunity to consider the proposed conditions. The Panel reconvened to consider the oral submissions of the Parties.

The Presenter advised the Panel that she had made contact with your employer. Your employer has no difficulty with these conditions being implemented when you return to work. The Presenter had no further submissions to make on the proposed conditions.

Your representative submitted that you were in agreement with the proposed conditions.

The Panel accordingly confirmed their decision to impose a sanction of a warning on your Registration for a period of one year and conditions as proposed.