

Outcome of Fitness to Practise Panel impairment hearing held on Monday 23, Tuesday 24, Wednesday 25, Thursday 26 and Friday 27 August 2021

Name	Cecilia Mwansambo
Registration number	2054688
Part of Register	Support Workers in a Care Home Service for Adults
Current or most recent town of employment	Glasgow
Sanction	Removal
Date of effect	18 September 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 23 and Tuesday 24 August 2021 in person at the Mercure Hotel, Ingram Street, Glasgow and on Wednesday 25, Thursday 26 and Friday 27 August 2021 by video conferencing.

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

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)
- Scottish Social Services Council (Fitness to Practise) Rules 2016 as amended by the Social Services Council (Fitness to Practise) (Amendment) Rules 2017 (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 Support Worker by ASA International Ltd in Glasgow, and during the course of your employment, you did:

1. between 26 January 2018 and 19 July 2018 allow BB to impersonate you on numerous occasions in order to undertake agency shifts at Quarriers' [information redacted]
2. between 22 January 2018 and 18 August 2018 allow BB to impersonate you on more than one occasion in order to undertake agency shifts at Quarriers' Fred Martin Project, Victoria Park Drive North (Supported Living Service)
3. in or around September 2017 tell ASA International Ltd that you no longer worked for Quarriers when you undertook shifts at Quarriers' East Dunbartonshire Phase 3, Thorn Park (Housing Support Service) after this date
4. by your actions at allegations 1.-3. above act dishonestly

and in light of the above your fitness to practise is impaired because of your misconduct as set out in allegations 1.- 4.

Findings of Fact

The Panel found allegations 1., 2., 3. and 4. proved.

The Panel has been mindful to take care with how individuals are referred to in relation to the facts and to the allegations. For the avoidance of doubt where the decision refers to "you" the Panel is referring to Cecilia Mwansambo, being the person who attended the hearing and is registered with the SSSC. BB, who is referred to in the allegations as the person you are alleged to have allowed to impersonate you, is an identifiable individual who has been given the initials BB to protect their confidentiality. Where the initials BB are used in the decision, the Panel is referring to that identified person. There are other occasions within the decision where the evidence is such that the witnesses are referring to a person whom they knew as Cecilia Mwansambo but who is in fact not you, but they have not specifically identified that person as BB. The Panel will refer to that person in those terms.

Evidence considered

The Panel considered the evidence contained in the bundle, together with the oral evidence. The Panel heard oral evidence from ZZ, YY, VV and UU.

ZZ

ZZ is a recruitment manager with Trust Care and has been in that position since February 2021. ZZ was previously a Team Leader with ASA International Limited ("ASA"), a recruitment agency and was employed with them from 2013. His role was in placing candidates in care organisations. ZZ explained that you were registered with ASA as an agency worker. He confirmed the accuracy of the statement he gave to the SSSC.

At the hearing, ZZ identified you as the worker he had met and who was registered with ASA. You had provided the necessary references, completed the training and PVG check and were available for work from November 2015. ZZ explained in his statement that workers would provide their availability for shifts one month in advance and he would then telephone the worker to confirm that they had been booked in for shifts on the eCruit system. Any shifts allocated and their availability could be viewed by the worker on a portal which that worker could view using their own email address and password. The system would send a confirmation of the shifts by email to the worker. ASA would issue ID badges which contains a photograph of the worker which they collect personally when they start work. They should have the ID with them on every shift or they ought to be sent home.

ZZ had personally placed you in work from 2015. ZZ placed you with Quarriers for two years. There had been no concerns about your practice and indeed Quarriers reported that you got on well with service users, including a service user AA. After two years you were approached to work for Quarriers directly and you went to work full time for Quarriers East Dunbartonshire Phase 3, Thorn Park ("Thorn Park"). You continued to do some agency work for ASA. In around September 2017, ZZ noted that you had asked for increased hours with ASA. ZZ told the Panel that he asked you why your availability had increased and if you had left Thorn Park and you told him "yes". You said that you no longer worked at Thorn Park as the night shifts did not suit you.

ZZ said that you (or at least he understood it to be you) then continued with ASA undertaking shifts mainly for Quarriers [information redacted] which is a one-to-one service with AA. You were recorded with ASA as being on annual leave between 20 and 26 August 2018.

ZZ was contacted by YY on 27 August 2018, who told him that you had failed to turn up for shifts with Thorn Park between 24 and 25 August 2018. YY wanted to know if there was more than one worker with the name Cecilia Mwansambo. ZZ confirmed that there was no other person with that name registered with ASA.

ZZ had a telephone number for you which he exclusively used to speak to you. ZZ would talk to you on the telephone to confirm shifts and continued to do so until 2018. When asked, he could not explain how BB could have known about the shifts unless they had access to your telephone. ZZ asked YY for the contact

mobile number for the worker they believed to be Cecilia Mwansambo. When ZZ checked the telephone number against the ASA records it was a telephone number recorded for BB. BB had sought to be registered with ASA but although they met the other criteria, they could not provide a sufficiently recent address and as such could not be registered for shifts through ASA. ASA did hold a photograph of BB. The registration form completed by BB, which is in the bundle, stated that BB had heard of ASA "from my friend Cecilia Mwansambo". No ID was issued to BB and no access was given to them to the portal. BB was never paid by ASA. All payments were made to the bank account details held for you by ASA. This was the only bank account details they held for you. The system generates remittances advices for payment which were sent to your email address. ZZ was referred to the extract from eCruit which had your name on it and appeared to show payments being made to you for shifts at Phase 2 from January 2018 to August 2018.

Upon making enquiries with Quarriers, ZZ learned that you had continued to be employed directly with Thorn Park, although you had told him you were not. ASA would not as a matter of practice place you at Thorn Park as you had been employed directly by them.

ZZ then described the processes operated by ASA for payment. The worker would complete a time sheet in order to get paid. The time sheet should be signed at the end of each shift, but he was aware at times the timesheets were signed in advance. ZZ was referred to two timesheets in the bundle. They would be signed by the team leader at the place of work and the worker and then passed to ASA for processing. ASA operate a portal where each worker would have access to their own record of shifts worked and which would include shifts to be worked. It was possible to obtain blank timesheets to complete. A worker could not amend the portal. At that time only ASA could add shifts to the portal and ZZ would add shifts to it and then telephone you to confirm.

The majority of ZZ's contact with you was on the telephone, although sometimes by email. He has always contacted you on the same telephone number. ZZ said that all his conversations on the telephone were with the same person and that person was you.

ZZ sent a photograph of you to a manager at Quarriers Fred Martin Project ("Fred Martin Project") and was told that the photograph was not of the person who attended under your name for the shifts. ZZ was asked to look at a time sheet for a shift at Fred Martin and one at Thorn Park and to compare the signatures. He considered that they looked similar.

YY

YY is a project manager with Quarriers managing the [information redacted] service. She has been in that position since April 2017 and with Quarriers since 2014. YY explained that an individual purporting to be Cecilia Mwansambo was recruited through ASA to carry out shifts at [information redacted] providing one

to one support in November 2017. She confirmed the accuracy of the statement she gave to the SSSC.

WW was a team leader at Thorn Park. YY received a telephone call on 28 August 2018 from [information redacted] about an issue with medication and asked a team leader to attend [information redacted]. That team leader happened to be in the car with WW when she took the call from YY. WW advised that team leader that the Cecilia Mwansambo who worked at Thorn Park was absent. YY said that they suspected that you were taking time off sick to work for the agency in another service. YY asked WW to go and check that it was the same person who worked at Thorn Park that was working at [information redacted]. WW told YY it was not the same person and YY said she was adamant about it.

YY contacted ASA to find out if they had two individuals with the same name registered with them. She spoke to ZZ who confirmed that they did not.

YY explained that she met the person employed at [information redacted] purporting to be Cecilia Mwansambo on one occasion when she collected her from a hospital appointment she was attending with the service user from [information redacted], AA. On that occasion, YY asked this person to put her mobile telephone number into her telephone so that YY would be able to contact her directly about availability for a particular shift that evening. The person purporting to be Cecilia Mwansambo did so. On 28 August 2018, when YY received the telephone call about the medication issue at [information redacted] the caller identified themselves as Cecilia Manswambo but her name did not register on YY's telephone. The number was not one recognised by YY. YY was not originally concerned. However, YY later telephoned Cecilia Mwansambo on the telephone number she had been given from the person she met at the hospital and asked that person to attend a meeting which they said they could not do as they were not in the country. YY says that she now believes she spoke to two different individuals both purporting to be Cecilia Mwansambo.

YY was referred to the rota of 26 and 27 January 2018 for Thorn Park and for [information redacted]. It appeared to show someone called Cecilia Mwansambo in two places at the same time which the witness acknowledged was not possible. YY said that she had examined the records and there were at least six such incidences.

YY has never met you and at the hearing confirmed that you were not the person she met with the service user and who purported to be Cecilia Mwansambo.

YY was shown the passport photograph of BB in the bundle, but she said that she did not recognise her. The witness did not recognise your photograph either. YY confirmed that she did not recognise you when she saw you in person at the hearing.

VV

VV is a Project manager with Quarriers. He has been with Quarriers for 15 years. VV was a Team Manager with the Fred Martin service at the relevant time. He confirmed the accuracy of the statement he gave to the SSSC.

VV was asked if he recognised you. He said he did not and that you were not the individual that he had known as Cecilia Mwansambo. He met the individual that he knew as Cecilia Mwansambo in around July 2018 when he started with Fred Martin. That individual was already working with Fred Martin as an agency worker placed by ASA. VV had no concerns as to the practice of that individual.

VV confirmed that when an individual started at Fred Martin from ASA there was an induction checklist that would be carried out and as part of that process their ID would be checked. VV was not at Fred Martin when that induction was done but was unaware of any issues.

VV explained that individuals would be booked through ZZ at ASA who would enter the shifts on eCruit. VV met the person purporting to be Cecilia Mwansambo on about 10 occasions although it would be briefly on each occasion. The person he met was always the same person. VV also confirmed that they would not promote the wearing of an ID badge while providing personal care or while in the community, although he did see the person with an ID badge on occasion. He was not close enough to confirm if the photograph was of the person wearing the ID, but it was in the name of Cecilia Mwansambo. VV had provided written answers in email form to questions posed by the investigating officer appointed by Quarriers. In the course of that process, he was sent a photograph. The photograph was not of the person he knew as Cecilia Mwansambo. VV told the Panel the photograph was of you, being the person present at the hearing. VV also confirmed that he was sent a passport photograph by the SSSC which was of BB. VV confirmed that that photograph was a likeness of the person he knew as Cecilia Mwansambo.

VV had provided a list of the shifts worked by a person purporting to be Cecilia Mwansambo at Fred Martin which could be compared with shifts worked by you at Thorn Park.

UU

UU is a Project Manager with Thorn Park. UU has been in that role since 2016 and prior to that he was a Team leader in a different service from 2011. He confirmed the accuracy of the statement he gave to the SSSC.

UU explained that he met you while you were an agency worker with ASA and undertaking shifts at Thorn Park. He confirmed that you, present at the hearing, were the person he knew from Thorn Park. UU said that he would see you about once per month. He explained that you were successful in being appointed to

the post at Thorn Park and employed by Quarriers directly. UU said that you were not prevented from continuing to undertake shifts for ASA but that it was understood that you would not be placed at Quarriers. You would have been provided with a staff badge although there was no requirement for it to be worn.

UU told the Panel that just as he was about to go on holiday, he was advised that you had not turned up for a shift. This was very out of character for you as you were always punctual. He had never had any concerns as to your practice. He was more concerned for your wellbeing when you did not attend. UU then went on holiday and heard about what had occurred on his return.

UU was shown the rota for Thorn Park for 26 and 27 August 2018, which showed that you had undertaken a night shift. Although the night shift start time varied, it would not have been possible to be at [information redacted], as they were a number of miles apart, at the same time. The service user at [information redacted], [information redacted], was able to communicate and would have been able to tell staff if different people have been providing the care.

UU stated that there was a close working relationship between him and the managers of the other services at Quarriers. They discuss staff and would be concerned if staff were undertaking too many hours. He says that he would have mentioned Cecilia Mwansambo in the presence of other managers. He was unaware that a Cecilia Mwansambo was carrying out shifts at [information redacted] and Fred Martin. He also said that he did speak to ZZ on occasion to ensure that staff were not undertaking too many hours and was told by ZZ that you were undertaking only a few agency shifts in addition to your work at Thorn Park.

UU expressed safeguarding concerns which would arise if a person unknown to the service was undertaking shifts. UU also confirmed that there was an agency checklist that would have been completed with you when you began work at Thorn Park and that would involve the checking of ID and, if the facility was available, a photocopy would be taken of that ID.

Your evidence

You did not give evidence on your own account but made clear that you denied the allegations. The Panel also had regard to your position as set out by your solicitor in a letter to the SSSC dated 13 March 2020. In particular, you did not know how BB managed to obtain your personal details although it is plain that she had them. This was without your consent or collusion.

Presenter's submissions

The Presenter began by referring the Panel to Rules 17.4., 32.11. and 32.12., which provide that where facts are disputed the burden of proving those facts rests with the SSSC and it 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 submitted that the SSSC relied on the evidence of the witnesses and the documentary evidence in the bundle. The Presenter submitted that the Panel should be satisfied that there is sufficient evidence to find the allegations proved and, to consider if the Panel is satisfied, that sufficient weight should be given to the evidence to find the allegations proved.

The Presenter submitted that there were two elements to allegations 1. and 2. The first is whether BB impersonated you on shift and the second is whether you allowed it. In terms of allowing it, the Presenter submitted that this means that you at least had knowledge that BB was working using your name and details and the position of the SSSC is that you were so aware.

In relation to the impersonation, YY confirmed that you were not the person she had met although the Presenter accepted that her recollection was not good as she had met BB only once and was not best placed to speak to the passport photograph at page 230 of the bundle. VV was shown the passport photograph at page 230 and said it was the person he knew as Cecilia Mwansambo. He was referred to shifts in January 2018 when Cecilia Mwansambo was scheduled to be on shift at both Victoria Road and Thorn Park and he confirmed that was not possible. On balance, the person at the Victoria Road service was BB.

In relation to the second element, the Presenter submitted that you must have been aware that BB was working using your details. BB provided your telephone number to YY. YY confirmed that she spoke to two separate individuals purporting to be you. BB completed an application form for ASA in which she stated that she knew you. BB did not get a badge from ASA. However, WW says in her statement that she saw a badge in the possession of BB from ASA with your photograph on it and your name. ZZ acknowledged that it was possible to have blank time sheets completed in advance of shifts and that you could have completed the sheets and given them to BB.

The Presenter submitted that there was sufficient evidence within the bundle to suggest that you were involved and there is no alternative explanation of that evidence.

In relation to allegation 3., ZZ says that he contacted you in September 2017 by telephone. He was confident that it was you as he had telephoned you many times over the years and that he had never spoken to any other person purporting to be you. You told him that you were no longer working at Thorn Park.

In the event that allegations 1., 2. and 3. are proved, they are dishonest. As such allegation 4. is also proved.

Your submissions

You advised the Panel that you do not know BB. The name does not mean anything to you and as far as you are aware you have never met her. When asked if you had an explanation as to why BB might have had your ID you could not offer an explanation.

You confirmed that you had been registered with ASA since 2015 as an agency worker. You began doing night shifts for Quarriers at Thorn Park and in May 2017 you began working for them directly. You continued in that role until you [information redacted] in August 2018. You did not return to work at Quarriers thereafter. You continued to do some agency work with ASA while employed by Quarriers until April 2018 when you got married, as you could not take on too much work when you were married. You told the Panel that you had never worked at [information redacted] or Fred Martin Project.

Decision on Findings in Fact

The Panel had regard to the oral evidence of the witnesses, to the bundle and to the submissions of you and the Presenter in reaching its decision.

The Panel found allegations 1., 2., 3. and 4. proved.

The Panel found the evidence of the witnesses to be broadly credible and reliable. Indeed, to a significant extent, there was little about what each witness had to say that was factually disputed by you.

In particular, you registered with ASA in 2015 and carried out shifts for them until 2018. You took up employment with Quarriers in Thorn Park as an employee in 2017 having carried out shifts there through ASA. You continued to be engaged with ASA while employed at Thorn Park. You did not carry out shifts for ASA at [information redacted] or Fred Martin Project.

In relation to the allegations, the Panel is satisfied that you were employed as a support worker by ASA from around November 2015 until around August 2018.

In relation to allegations 1. and 2., in the view of the Panel, it must be satisfied that between the dates specified BB carried out shifts on numerous occasions at either [information redacted] or Fred Martin Project, impersonating you, and that you allowed this to occur.

You acknowledge that you did not carry out shifts at either [information redacted] or Fred Martin Project during the periods specified or indeed at all. It is clear from the evidence of ZZ that during the period in question from January 2018 to August 2018 (when the issue came to light) that he was the person at ASA responsible for allocating shifts to you. He had been working with you since 2015 and spoke to you on a regular basis on the telephone. He had one telephone number for you. As far as he was concerned, he was requesting that you carry out the shifts at [information redacted] and Fred Martin Project and

indeed said in terms that he would telephone you (in the main although it was on occasion by email) to confirm the shifts. In addition, he confirmed that there was one bank account in your name to which payment for the shifts at these services was made and one email address to which confirmation of these payments was sent. The shifts at [information redacted] and the dates on which they were undertaken were logged on eCruit and the extract from eCruit was before the Panel.

There is also evidence in the bundle to the effect that two people called Cecilia Mwansambo were carrying out shifts at the same time in different locations.

In addition, as far as YY was concerned, an individual by the name of Cecilia Mwansambo was engaged in shifts at [information redacted]. She met a person purporting to be Cecilia Mwansambo and was given a contact telephone number by her. This telephone number was your number, as it was the telephone number on which ZZ contacted you on behalf of ASA. WW says in her statement that she saw an ID badge at [information redacted] with your name on it.

In relation to the Fred Martin Project, VV confirmed that he saw an ID badge with your name on it. He met the person purporting to be Cecilia Mwansambo on at least 10 occasions at the Fred Martin Project. VV confirmed that an individual purporting to be Cecilia Mwansambo from ASA undertook shifts at Fred Martin Project on specified dates between January and August 2018 and he provided a list of those dates. He confirmed that that person was not you.

The Panel accordingly find that a person using the name Cecilia Mwansambo and purporting to be registered with ASA carried out shifts at [information redacted] and Fred Martin during the period specified in the allegations.

In order to find the allegations proved, the Panel must on balance be satisfied that the person purporting to be you was BB. The Panel is satisfied on the evidence that the person was BB. While YY was not a particularly reliable witness in relation to the identity of BB, another witness was more confident in identifying her.

YY was able to give ZZ the mobile telephone number which the person purporting to be you telephoned her from on 28 August 2018 to report the medication issue at [information redacted]. ZZ was able to confirm that that telephone number was that of BB. He knew this because she had undertaken the registration process with ASA, and he had a copy of BB's passport and her mobile telephone details on file. In addition, VV was able to confirm from the passport photograph of BB that it was the person purporting to be Cecilia Mwansambo at Fred Martin Project. On balance, the Panel is satisfied that the person impersonating you at Fred Martin Project and [information redacted] was BB.

The Panel then had to determine if you allowed BB to impersonate you. In the view of the Panel this means that there must be evidence that you let BB

impersonate you. The Panel noted that you denied knowing BB. BB confirmed to ASA on their application form that they had been made aware of ASA by you as you were a friend of BB.

The Panel accepted in its entirety the evidence of ZZ. ZZ had worked with you and spoken to you on a regular basis since 2015. He is clear that he never spoke to anyone but you about shifts, and on the only telephone number he had for you. In particular, he would have checked with you your availability for the shifts at Fred Martin Project and [information redacted]. The shifts are specified in the portal which you would have an email address and a password of your own to access. Although you did say you did not access the portal, in order for BB to access it they would require your password. Taking these factors together, there does not appear to be an explanation as to how BB could be aware of the availability of shifts, the allocation of shifts and when they were unless BB was told by you or permitted by you to access the portal.

In addition, ZZ is also clear that you were being paid for working these shifts. There was only one bank account to which payments were made to you. As such you would have received the payments for these shifts. There is no suggestion that you ever queried why you were being paid for shifts you did not undertake. Further, YY was given your telephone number by the person purporting to be you when she met her at the hospital with the service user from [information redacted]. When BB later telephoned her, she used a number which YY's telephone did not recognise and that was the telephone number that YY was able to confirm with ZZ was in fact BB's number. It appears from this evidence that the person purporting to be you had your telephone number and provided it to YY.

There is other evidence which the Panel was invited to consider would support the view that you allowed BB to impersonate you. WW said that she saw an ID badge in the possession of the person purporting to be you with your name and photograph on it. WW's evidence was hearsay. To the extent that she said in her statement that she had seen a badge in the possession of the person purporting to be you with your name on it, this evidence is supported by the evidence of others who had also seen a person other than you with such a badge. However, WW also says that the photograph was of you. The Panel did not consider it could give weight to this assertion that the badge also had your photograph on it, given the level of uncertainty expressed by others as to the photograph on the badge. There was also evidence to the effect that the signatures on time sheets for Thorn Park and [information redacted] were the same or similar suggesting that you had signed both. The Panel did not consider that it could conclude, on balance, that because the signatures looked the same or similar that you had signed both time sheets. This is particularly so given that it appeared to be possible to obtain blank timesheets.

However, taken all together and with the evidence of ZZ and YY, the Panel considers that, on balance, you did allow BB to impersonate you. The Panel was satisfied from what it had heard about the processes that it would be difficult to

envisage how an individual might be aware that a Cecilia Mwansambo was registered with ASA, could be aware of the shifts she had been allocated to undertake, and undertake those shifts without your knowledge. In addition, you received payment for those shifts into your bank account and confirmation by email of those payments. It is unclear why anyone would undertake shifts for which they were then not subsequently paid or if you had been paid in error why this was not raised by you with ASA.

In relation to allegation 3., having accepted the evidence of ZZ in its entirety, the Panel find proved that you did tell him you no longer worked at Thorn Park in September 2017. This was not so, having regard to the evidence of UU that you continued to work for Thorn Park until August 2018 and indeed your own position that you did so. It is perhaps worth noting that it is after this point in time that you agreed to undertake more shifts for ASA and which coincides with BB undertaking shifts in your name.

The Panel accordingly find allegations 1., 2. and 3. proved. Having done so the Panel had to decide if the actions described were dishonest.

The Panel considered the test for dishonesty as set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. You denied the conduct. However, the Panel consider the allegations as found proved are dishonest in nature and as such ordinary decent people would consider the conduct to be dishonest.

The Panel did note that there were no issues with your practice and neither UU, the project manager at Thorn Park, or ZZ, who had worked with you through ASA since 2015, had any concerns as to your practice.

The Panel found allegations 1., 2., 3. and 4. proved.

Impairment

You were asked if you admitted that your fitness to practice was impaired. You did not. There was no further witness evidence led or documentary evidence led at the Impairment stage. The Panel accordingly proceeded to hear submissions from both parties.

Presenter's submissions

The Presenter referred the Panel to Rule 2.2. on the meaning of fitness to practise and impairment and submitted that you were impaired by reason of misconduct. The Presenter referred the Panel to the terms of Section 59 of the Act being the general principles which apply in reaching any decision and to the Decisions Guidance.

In relation to the allegations, the Presenter submitted that this conduct amounts to misconduct. The Panel was referred to the cases of *Mallon v General Medical Council* [2007] CSIH 17, *Roylance v General Medical Council* (No.2) [2000] 1 AC 311 and *Remedy (UK) Ltd v General Medical Council* [2010] EWHC 1245 (Admin)

in relation to the meaning of misconduct. Whether the conduct amounts to misconduct is a matter for the Panel based on its skill and judgment and in light of the evidence presented to it.

The Presenter submitted that in relation to the allegations you were in breach of multiple parts of the Code, being parts 2.1; 2.2; 2.4; 2.5; 3.3; 3.7; 3.10; 5.2; 5.3; 5.7; 5.8; 6.1 and 6.5. The conduct amounted to serious professional misconduct.

The Panel must consider if you are currently impaired. The Panel was referred to the case of *Cohen v General Medical Council* [2008] EWHC 581 and *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin) and, in particular, invited to consider whether the conduct is remediable, has been remediated and the likelihood of repetition. In deciding on impairment, the Panel has to consider the need to protect service users and to uphold standards of behaviour in the profession. The misconduct is serious and there are, in the view of the Presenter, significant public protection and public interest concerns. There is a need to maintain confidence in the profession.

The Presenter submitted that you had shown no insight into the allegations and continued to deny knowing BB. The Panel has heard no evidence as to efforts made to remediate the conduct. The conduct is in any event dishonest which is difficult to remediate. The Presenter did acknowledge your excellent work record. By allowing someone else to use your identity you had placed vulnerable service users at risk of emotional and physical harm, although there was no evidence that actual harm had been caused. The risk of repetition was not low given the attitudinal nature of the conduct.

The Panel was invited to find that you your fitness to practise is currently impaired.

Your submissions

You did not agree with the submissions of the Presenter that you are currently impaired. You maintained the position that there was no evidence that you knew BB and gave her your details.

You told the Panel that you enjoyed working in care, working with and taking care of people. You said that you thought you were fit to do that work. You did say that you did not intend to return to the sector at the moment as you have a young family now. You would like to return in the future.

The Panel acknowledged that you continued to deny the allegations but asked if you had any view as what the public might think of a person who did what was alleged working in social care. You said that you would not wish to judge anyone else.

You did say that you were going to attempt to find out who it was that was using your details.

Panel's decision and reasons

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

The Panel, in all the circumstances, find that your fitness to practise is impaired by reason of misconduct in relation to the allegations found proved and that your fitness to practise is currently impaired.

In reaching its decision, the Panel had regard to the bundle, the oral evidence, case law, the Decisions Guidance and the submissions of the Presenter and you. The Panel had regard to Rule 2. as to the meaning of fitness to practise 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 Code.

In terms of Rule 2., your fitness to practise may be impaired on one or more grounds including misconduct.

The Panel considered the allegations which had been found proved. You had allowed another person to impersonate you on shifts over a number of months and at two different locations. You had also told ASA that you were no longer employed at Thorn Park when that was not the case. In that conduct you were dishonest. In so doing you were not truthful, reliable or dependable. You failed to honour work commitments that had been allocated to you by ASA. Your conduct amounted to a significant abuse of trust, both of service users and colleagues, and a failure to treat others, including your employer, with respect. Dishonesty is particularly serious as it undermines trust in social services. The Panel noted the terms of section 10.3 of the Decisions Guidance which is concerned with conduct where more serious action may be required to be taken.

The Panel considered that the conduct constituted breaches of parts 2.1; 2.4; 2.5; 3.3; 5.3; 5.7; 5.8; 6.1 and 6.5 of the Code. As such, your fitness to practise is impaired on the grounds of misconduct.

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 very serious. The conduct involved significant dishonesty and breach of the trust placed in you by your employer. The Panel did consider the conduct found proved to amount to a pattern of conduct over a considerable period of time. The Panel did consider, on the evidence available to it, that the conduct was deliberate.

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.

However, you continue to deny the allegations which you are entitled to do. As such, there has been no insight, regret or apology in respect of the allegations. The Panel noted that even in circumstances where you did not accept the allegations found proved, you did not express any understanding as to the impact of the conduct on service users and colleagues. Rather, your focus was on the fact that you did not know BB. This lack of insight and inability to reflect on the impact of any conduct on others is an aggravating factor.

In relation to your previous history, the Panel noted that you have worked in care since at least 2015 and there were no issues with your practice. Indeed, ASA and Quarriers were of the view that your practice was good. This is a mitigating factor.

The Panel sought to have regard to the circumstances leading up to the behaviour. The Panel did not hear any evidence as to the circumstances. It is clear that the conduct amounted to a significant breach of the Code and the conduct was, in the view of the Panel, deliberate. This would appear to be an aggravating factor.

The Panel noted that there has been a significant period of time since the conduct but that you have been prevented from working in care as a consequence of a Temporary Suspension Order. You have accordingly been unable to show additional good practice. The Panel consider therefore that this is a neutral factor.

The conduct occurred inside the workplace. The Panel consider this to be an aggravating factor, given the very serious nature of the conduct.

The Panel had regard to your cooperation with the SSSC. It was to your considerable credit that you have attended this hearing over a number of days and have taken an active part. You have shown commitment to being a registered Worker in that regard.

The Panel considered that the conduct did amount to a pattern of behaviour and as such this is an aggravating factor.

In considering the consequences of the behaviour, the Panel did not hear evidence that any service user was harmed. Indeed, the evidence before the Panel was that BB provided a high standard of care and would have been

registered with ASA but for the lack of a permanent address. However, it was clear that colleagues had been exploited. The Panel considered that there had been an abuse of trust of both colleagues, employers and service users.

There was no suggestion that you had been under duress. There was no issue arising as to the concealment of wrongdoing.

You did not provide testimonials, although those who gave evidence and who had experience of your work had no concerns about your practice and indeed were very positive about your practice. The positive references as to your practice are a mitigating factor. There were no references as to your character.

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

In relation to the allegations, the Panel considered that it was possible for the conduct to be remediated although it was acknowledged that is more difficult when the conduct involves dishonesty.

In relation to whether the conduct had been remediated, the Panel noted that you had, and continue to, deny the allegations. As such, it could not be said that there had been any remediation undertaken by you.

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 the perspective of your employer or service users and colleagues. The Panel consider that you could have shown such insight and reflection while maintaining that the conduct did not occur. 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 it could say that the risk of repetition was low.

The Panel accordingly acknowledge that, while there are mitigating factors involving your practice and cooperation with the SSSC, there are a number of aggravating factors and, as such, the Panel was of the view that a finding of impairment was necessary to protect the public. The conduct 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.

The Panel 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 practise, the Panel went on to consider mitigation and sanction.

The Presenter did not lead any further evidence or call any further witnesses.
You 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 a Removal Order.

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 Presenter referred the Panel to the case of *Bolton v The Law Society* [1994] 1 WLR 512. The Panel is required to undertake a balancing exercise.

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

The Presenter noted that the conduct was found to be serious. 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 it reaches the least restrictive decision that adequately addresses the behaviour.

The Presenter submitted that an outcome of "no further action" would not be appropriate. There are no exceptional circumstances that would warrant such an outcome. Actions needs to be taken, given the risk of repetition and lack of insight identified. The Presenter submitted that a warning alone would not address the public interest and public protection concerns. The Presenter submitted that conditions may be appropriate where, for example, the conduct could be addressed by training. Any conditions must be workable and enforceable. Where the allegations are denied, are serious and involve dishonesty, more serious action is required. A combination of conditions and a warning would therefore also not be appropriate. Suspension would not be appropriate as the conduct involves a values issue and the conduct is not capable of being easily remediated.

The Presenter submitted that removal is appropriate. You were employed to work with vulnerable people and a high standard of honesty is expected. There was a risk of harm, and such conduct undermines the confidence in the profession and the regulator. The conduct calls into question your suitability to work in social services. Removal is appropriate having regard to a number of aggravating factors, including the serious and deliberate nature of the conduct, that it involved dishonesty and an abuse of trust, that there has been a lack of insight and remorse and multiple breaches of the Code. There has been no remediation. In all the circumstances, removal is an appropriate sanction.

Your submissions

You told the Panel that you did not know BB and that you did not give her your ID badge and that you did not consider that there was evidence that you had done so. You indicated that a person could make an ID badge using a computer. You stated that you did not understand why the SSSC would seek to remove you from the Register.

Decision

The Panel decided to impose a Removal Order.

Reasons for the Panel's 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. of the Rules, namely:

- the evidence presented by the parties
- the seriousness of your impairment of fitness to practise
- 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 its 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. and sections 13.2 and 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 does not consider that there are exceptional circumstances to justify a decision to take no further action.

- The Panel considered that a warning was not appropriate in the circumstances. The conduct was very serious and involved numerous breaches of the Code. The conduct could not be said to be at the lower end of the scale where a warning could have been appropriate. No insight has been shown.
- The Panel did consider carefully whether a warning was sufficient to address the conduct in the circumstances. A warning would not address the public protection or public interest concerns.
- The Panel considered the imposition of conditions. The Panel took the view that conditions would not be appropriate to address the public protection and public interest concerns arising in respect of the allegations. The Panel noted the terms of section 15 of the Decisions Guidance. Conditions may not be appropriate where the conduct is dishonest, there has been no insight or reflection shown, and the conduct involves a serious breach of trust. Conditions would not be workable in the circumstances. Accordingly, having regard to the allegations found proved, conditions would not be appropriate.
- A warning plus conditions would not be appropriate for the reasons already outlined.
- A Suspension Order would not be appropriate as there is no evidence that a period of suspension would allow you to remedy the cause of the impairment in your fitness to practise. There is a lack of insight shown by you and the Panel was unable to conclude that the risk of repetition was low.
- For the reasons outlined above a Suspension Order plus conditions would not be appropriate.
- The Panel considers that a Removal Order is the most appropriate sanction as it is both necessary and justified in the public interest and to maintain continuing trust and confidence in the social services profession and the SSSC as regulator of the profession. The conduct is serious and amounts to a significant abuse of trust. There has been no insight shown and the conduct has not been remediated. In all the circumstances, the imposition of a Removal Order is proportionate.