

Outcome of Fitness to Practise Panel impairment hearing held on Monday 7, Tuesday 8, Wednesday 9 and Thursday 10 June 2021

Name	Angus Mclellan
Registration number	3157317
Part of Register	Residential Child Care Workers
Current or most recent town of employment	Dunoon
Sanction	Removal
Date of effect	2 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 7, Tuesday 8, Wednesday 9 and Thursday 10 June 2021 by remote videoconference.

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 Residential Child Care Workers and to extend the TSO until 31 July 2021.

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 at the hearing were as follows:

On or around 4 April 2020 while employed as a Residential Child Care Worker with Spark of Genius (Training) Ltd at [Redacted], Dunoon, and during the course of your employment you did:

1. in regard to 15-year-old service user AA:
 - a. push AA resulting in AA falling to the ground;
 - b. kick AA to the leg several times;
 - c. your actions at 1.a and b above caused upset to AA;
2. in the presence of your colleague ZZ when referring to your actions detailed at 1. above;
 - a. say "he [AA] deserves it" or words to that effect;
 - b. say you "would have done it again," or words to that effect;
 - c. say you "would have kept kicking AA" or words to that effect;
3. in the presence of your colleague ZZ, refer to AA as "a prick," or words to that effect.

and in light of the above your fitness to practise is impaired because of misconduct as set out in allegations 1.-3. above.

Findings of Fact

The Panel found the following facts proved:

1. You are enrolled in the part of the Register for Residential Child Care Workers. You were registered on 14 February 2020. You have remained on the Register from that date to the present.
2. You were employed as a Residential Child Care Worker by Spark of Genius (Training) Ltd at [Redacted] in Dunoon from 3 December 2019 until 9 April 2020.
3. You were employed in that role on 4 April 2020, the date on which all the allegations were said to have taken place. All the allegations were said to have taken place in the course of that employment.
4. The events of 4 April 2020 took place during the COVID-19 pandemic, shortly after the imposition of a national lockdown. The events of 4 April 2020 took place during a tense and difficult time, when emotions and residents' frustrations were running high in [Redacted] as a result of the lockdown.

5. On or around 4 April 2020, during the course of your employment, in relation to 15-year-old service user AA, you pushed AA resulting in him falling to the ground.
6. On or around 4 April 2020, during the course of your employment, in relation to 15-year-old service user AA, you kicked AA to the leg more than once.
7. Your actions in Finding of Fact 6. were deliberate.
8. On or around 4 April 2020, during the course of your employment, in relation to 15-year-old service user AA, by your actions at Findings of Fact 5. and 6., you caused upset to AA.
9. Your actions at Findings of Fact 5., 6., 7. and 8. occurred after considerable provocation by AA towards you.
10. On or around 4 April 2020, during the course of your employment, in the presence of your colleague ZZ when referring to your actions detailed at Findings of Fact 5., 6., 7. and 8., you said "he [AA] deserves it" or words to that effect.
11. On or around 4 April 2020, during the course of your employment, in the presence of your colleague ZZ when referring to your actions detailed at Findings of Fact 5., 6., 7. and 8., you said you "would have done it again," or words to that effect.
12. On or around 4 April 2020, during the course of your employment, in the presence of your colleague ZZ when referring to your actions detailed at Findings of Fact 5., 6., 7. and 8., you said you "would have kept kicking AA" or words to that effect.
13. On or around 4 April 2020, during the course of your employment, in the presence of your colleague ZZ, you referred to AA as "a prick," or words to that effect.

Evidence

The SSSC led two witnesses: ZZ, one of your colleagues employed as a Residential Child Care Worker; and YY, one of your colleagues employed as a House Manager. You also gave evidence on your own behalf.

ZZ confirmed that she had been on duty with you on the day when the events set out in the allegations were said to have happened. She spoke to the events of that day, confirming what was set out in all the allegations. She provided information about the situation in [Redacted] at the time in question. She explained to the Panel that the young residents in the house deliberately made life difficult for you. She spoke clearly to the events in allegation 1., confirming

that she had been at the rear door of the house, and had a clear view. She described your demeanour as upset, angry and annoyed. She suggested you were not in control of your emotions. She also spoke to the comments attributed to you in allegations 2. and 3. She maintained her position that the allegations happened as set out, even in the face of cross examination by you. ZZ also confirmed that she had completed a serious incident report form (pages 23-25 of the bundle) and produced a written statement and supplementary statement for the SSSC (pages 31-40 of the bundle).

YY told the Panel of the circumstances at [Redacted] around the time in question. She also confirmed the management structures in place and your involvement in the organisation. The boys at the house presented challenging behaviour and could be difficult to manage. It was during the pandemic lockdown and this exacerbated some of the problems. She confirmed that the incident had been brought to her attention shortly after it happened. She had noted ZZ's account of events and had noted that you had been charged by the police. She arranged a meeting which you attended, and your employment was terminated. You had said little because your lawyer had advised you not to. She confirmed that the service user had been upset following the incident. She spoke to the restraint techniques practised by your employers and suggested that the appropriate course of action for you would have been to walk away. She confirmed that you appeared to her to be angry and upset after the incident and was not sure whether you fully understood the situation. She felt that at the meeting on 9 April you still felt very raw about the incident. She confirmed that some staff had been critical of your behaviour, while some others had felt you were possibly justified in your actions. YY also maintained her position during cross examination. She also confirmed that she had produced a written statement (pages 42-46 of the bundle).

You then gave evidence on your own behalf.

You set out your version of events, which differed somewhat from ZZ's. You explained that the boys, and AA in particular, had been particularly troublesome that evening. You set out the events that had led up to the incident, and your account of the incident itself. You were clear that you had not pushed AA to the ground, and that he had kicked, punched and spat on you. You then chased him round the garden after he evaded your grasp. He had fallen twice, and you speculated that your foot might have made contact with him as you jumped over him one time. You thought that might have been what prompted ZZ to suggest you had kicked him. You had then performed a "sliding tackle" to bring AA to the ground, to prevent him reaching a pile of wood, which you were afraid he would use as a weapon. AA had a history of smashing things, spitting, and assaulting people, and you were afraid for your safety, for that of other staff and service users, and for the property itself. You knew that you were not going to get help from ZZ, and you had to make an instant decision about how to act.

You did not know why ZZ had a different version of events to you.

You provided the Panel with some background information in relation to the home and your experiences within it. You confirmed that you had been very worried about the pandemic. AA was regularly out the house meeting other individuals. You were aware that he might contract the virus and pass it on, even if he was a-symptomatic. You were concerned about spitting. You were concerned for your family when you were potentially exposed to the virus.

You told the Panel that you had a good relationship with one of the other boys in the house, BB. He did not get on with the others. He had been self-isolating in his room for one period with COVID-19 symptoms, but you suspected that this was simply a device by your employers to prevent BB getting to see his father, and avoiding staff having to leave the house to travel with him to beyond Edinburgh.

You disputed the suggestion by other witnesses that you could have restrained AA and explained why your training had not prepared you for the reality of an uncooperative young person. You also indicated that you had been invited to only two staff or team meetings and had been able to attend only one. You considered that as bank staff, your views were of low value to your employers.

You explained the issues you had with other witnesses' accounts.

In cross examination, you did not accept that you had lost your temper. You confirmed that you were angry about having been spat on, but explained that during the incident, you had been trying to protect yourself. You tried to maintain control but the availability of the pile of sticks as weapons for AA had made that difficult.

You accepted that you had other options but considered that all of these also involved potential risks. If you had walked away, you still thought that AA would have damaged the window with a stick. If you did nothing, others, or the property, might have been attacked. You had dealt with it as you felt you had to in the moment. You accepted that a slide tackle was not an approved procedure, but you felt you had to act to prevent AA reaching the sticks. You had intended after that manoeuvre to restrain AA but he had been too quick for you and had run off.

You were asked about the alleged comments after the event. You said that you did not remember making the comments, but it was possible that you had said something of that sort. If you had, it had been in the office with only ZZ present. No service users had been present.

In addition to the oral evidence, there were various documents within the bundle of documents which provided some further evidence for the Panel. The Presenter took the Panel to certain of these. You referred the Panel to your own documents in the bundle, consisting of various commendations by your former employers. You also produced a plan and written statement which you explained you had sent to a lawyer you anticipated would represent you in the

criminal proceedings. These were added to the bundle and taken into account by the Panel in their deliberations.

Submissions by the SSSC

The Presenter reminded the Panel that the burden of proof was on the SSSC, and the standard of proof was the civil standard, namely the balance of probabilities. He drew the Panel's attention to the case of *In re B (Children)* [2008] UKHL 35, which provides that a Panel must decide whether an event did take place or not, on the balance of probabilities. There is no scope for sitting on the fence.

The Presenter acknowledged at the outset that there was clearly much sympathy for you in respect of the situation you found yourself having to deal with, in addition to the complications of the COVID-19 restrictions. However, the allegations were highly serious, and he submitted that all the allegations had been proved, on the balance of probabilities.

He suggested that the issue for the Panel turned largely on whether they preferred the evidence of ZZ or yourself. He suggested that there was no compelling reason for the Panel to doubt ZZ. She had no reason to concoct or embellish the evidence and it was unclear on what basis the Panel could discount her evidence. It was consistent over time. The Incident Form was a brief and succinct document, while the SSSC statement was more detailed. There was nothing to read into the addition of more detail in the statement. ZZ had given her evidence in good faith to her employer, the police and the SSSC and had attended the hearing to give evidence although under no legal obligation to do so.

In contrast, it could not be said that your evidence was consistent. Your position on the comments after the event, in particular was not clear or consistent. You appeared to acknowledge having lost control, but later denied doing so. Your account of having chased AA and slide tackled him to stop him, was not credible.

Your focus on the significant circumstances leading up to the incident was a matter to take into account at the Impairment stage of proceedings, but did not affect the position in this Findings of Fact stage. This was a case in which there had been an assault by an adult worker, on a child, pushing and repeatedly kicking him. You had failed to take the opportunity to retreat to the house, or to appeal for help, and your suggestion of a threat from the pile of wood was not borne out by the evidence.

It went without saying that you had been provoked, and the spitting you had encountered was reprehensible, but it did not excuse your reaction. You had been entrusted to remain in control, even in such circumstances.

The allegations had been proven to the civil standard, and the Panel should find them proved and move onto the next stage of proceedings.

Your submission

You gave a brief further submission in which you indicated that you had cooperated with the police, and you felt your information had been corroborated. You had been punched, kicked and spat on. Your evidence should be preferred to ZZ's. You were telling the truth and you could not understand why she had a different version of events.

You had consistently maintained your position, which was the same as what you had told the police at the outset.

Reasons for the Panel's decision

The Panel considered carefully the evidence it heard from the two witnesses, and from yourself. It considered the submissions from the Presenter and yourself. It considered carefully all the documentation in the bundle of papers, including the papers produced by you.

The Panel kept in mind that the onus is on the SSSC to prove its case. It kept in mind that the standard of proof is the civil standard, namely proof on the balance of probabilities.

The Panel had no reason to doubt the evidence of ZZ or YY. Both were clear and straightforward in giving evidence. The Panel accepted that they had both given evidence honestly and to the best of their ability.

ZZ had spoken confidently and had maintained her position even when challenged. She acknowledged very fairly, that you had been given a very hard time in your role and had been placed in a very hard situation on the day in question. She appeared to have no axe to grind with you, and there appeared to be no reason why she would make up the allegations. The Panel had no reason to disbelieve her evidence. It accepted that her evidence was of the events as she saw them. The Panel bore in mind that it was possible that although honest, she might have been mistaken about some of the minor detail of the incident. However, it did not consider that she was likely to be mistaken about the main aspects of the incident. Her evidence was consistent with her statement to the SSSC. Although that statement provided more detail than her original serious incident report form, the Panel did not read too much into that. It noted that the serious incident report form provided limited space, and had been completed to show the main elements of the incident. The Panel thought it likely that she had been asked to provide more detail when the SSSC was investigating the case. The Panel accepted ZZ's evidence as honest, and generally credible and reliable.

YY spoke to what she had been told of the incident by ZZ, and also to some of the events following the incident. In particular, she had been present at the meeting which took place with you on 9 April 2020 and noted in the bundle of

documents at pages 17 to 19. The Panel noted that YY's evidence relating to the event itself was hearsay evidence and had to be treated with some caution. Nevertheless, it was broadly contemporaneous and served to reinforce the evidence ZZ had given on her own behalf. In relation to the meeting with you, the Panel had no reason to doubt YY's evidence. She provided considerable context to the situation pertaining in [Redacted] at the time of the incident. She also provided information about the management, and management structures in place at [Redacted]. She was prepared to acknowledge the difficulties that existed in the service at the time. Like ZZ, there was no obvious reason for her to bear any grudge against you, nor any obvious reason for her to make up her evidence. The Panel also accepted YY's evidence as honest, generally credible, and generally reliable.

The Panel was less convinced by your evidence. It was very apparent at the hearing, that you were still very emotionally attached to the incident, which clearly remained very raw. You did not appear to have got over the incident and its consequences, and you spoke in evidence to the effects of it continuing for some considerable time after it happened. It appeared to the Panel that you had some difficulty in remaining objective while giving evidence, and your own evidence and cross examination of other witnesses were affected by your emotional attachment to the case.

You spoke of having been terrified to go to work. It was clear that the pandemic and lockdown had been at the forefront of your mind at that time. You explained that your wife had been [Redacted] the day before incident. You clearly felt under considerable pressure to continue to go to work as the breadwinner for your family. However, you had serious reservations about the handling of the effects of the pandemic, for example personal protective equipment, and the failure to observe government requirements on the part of residents. There was a particular issue with spitting, particularly with AA. It was apparent to the Panel that you had difficulty coping with your job at the time in question. It seemed to the Panel that your behaviour then had been affected by your fears, and that you had not yet recovered.

The Panel considered that much of your evidence, although not dishonest, had been distorted by your stress, and by the constant replaying of the events in your mind that you spoke to. The Panel was not convinced that your evidence was entirely reliable.

It seemed also to the Panel that you had a great anxiety to justify your behaviour, possibly to yourself, and that you had convinced yourself of an account that excused and minimised your behaviour. The Panel accepted that your evidence was grounded in the truth, but considered that it had developed in your mind so that certain elements of it could not be relied upon.

In particular, the Panel did not accept your account of having chased AA around the garden. It preferred ZZ's evidence of the events having taken place in short compass at around one location. Her evidence on the matter appeared more

likely to the Panel. Similarly, ZZ was so clear in her recollection of you kicking AA, with him curled up in a foetal position, that the Panel felt compelled to accept her evidence on the matter. The Panel considered your account of having "slide tackled" AA to be less likely. The Panel did not discount your evidence overall as untrue, but where it conflicted with ZZ's, the Panel preferred her evidence.

The Panel noted that some of the evidence it heard, particularly from YY, was hearsay evidence. It noted that such evidence is admissible, but that the weight to be attached to it is for the Panel to assess, and hearsay evidence will often be regarded as less reliable than primary evidence.

The Panel then considered each of the allegations in turn.

The Panel found allegation 1.a. proved, on the balance of probabilities. ZZ gave evidence that you had pushed AA. Your evidence was that you had attempted to restrain him, but that he had run away. You gave evidence that he had fallen, twice, at a later point as you chased him round the garden. It did not seem likely to the Panel that your account was correct, and that ZZ had got confused about the timing of the fall. Having found that there was no chase around the garden, and having no reason to disbelieve ZZ, the Panel accepted her account of events.

The Panel also found allegation 1.b. proved on the balance of probabilities. Again, ZZ was very clear in her evidence that you had deliberately kicked AA. She was unclear precisely how often, but it was more than once. The Panel preferred to say in its findings that you had kicked AA "more than once" rather than "several times". "Several times" appeared to the Panel to have connotations which might mean more often than ZZ's evidence had suggested. The Panel did not consider it at all likely that ZZ had confused the kicking that she claimed to have seen, with either you making accidental contact with AA as you jumped over him, as you suggested, or with the "slide tackle" that you described. It thought it more likely that ZZ had indeed witnessed a straightforward kicking incident.

The Panel noted in any event, that a "slide tackle" was not an accepted means of restraining or controlling a young person, and it appeared to confirm in any event that you had deliberately carried out an assault on AA, making contact between your foot and his leg, whatever the intended purpose.

There was clear evidence from several sources, that AA had been upset by the incident, although there was nothing before the Panel to suggest that there were long term consequences for him. The Panel therefore found allegation 1.c. proved.

In relation to allegations 2.a., 2.b., 2.c. and 3., your position was not clear, and slightly contradictory. You had initially denied having made the comments, but latterly in cross examination, you indicated that you could not remember making

the comments and acknowledged that it was possible that you had said something to that effect. You acknowledged that you had called AA “a prick”, although not in the presence of service users (which was not alleged). The Panel concluded that on the strength of ZZ’s evidence, and your hesitancy on the matter, that on balance, the comments, or words to similar effect, had been made. The Panel was not convinced by your suggestion that the comment about being prepared to have done it again related to protecting yourself, rather than to kicking AA.

There was evidence, which the Panel accepted, to support all the allegations. The Panel therefore found all the allegations proved on the balance of probabilities.

Allegations found proved

Accordingly, the Panel found all the allegations against you proved.

Impairment

In light of the Panel’s Findings of Fact, the Panel went on to consider whether your fitness to practise is impaired.

There was no admission of impairment of your fitness to practise.

Evidence

There were no new papers and no further witnesses were led.

SSSC’s submissions

The Presenter reminded the Panel that the meaning of fitness to practise is set out in Rule 2.1., and Rule 2.2. sets out the specific grounds on which fitness to practise may be impaired.

The SSSC relied on the ground of misconduct in contending that your fitness to practise was impaired. There is no definition of misconduct in the Rules, but the case of *Roylance v General Medical Council* (no. 2) [2001] 1 AC 311 provides that it is an act or omission falling short of what would be proper in all the circumstances. The case of *Mallon v General Medical Council* [2007] CSIH 17 sets out that whether a matter is serious is for the Panel’s skilled judgement. He submitted that your behaviour fell short of the appropriate standard, and there was misconduct.

He referred to the cases of *Cohen v General Medical Council* [2008] EWHC 581, and *Council for Healthcare Regulatory Excellence v Nursing & Midwifery Council and Grant* [2011] EWHC 927 (Admin), which set out elements of the matters to be considered in any question of impairment. The Panel had to consider public protection, the wider public interest, whether the misconduct was easily

remediable, whether it had been remedied, and whether it was likely to be repeated. The cases also confirmed that impairment has to be considered as of today's date. The case of *Yeong v General Medical Council* [2009] EWHC 1923 (Admin) confirmed that where there has been a violation of fundamental rules of the profession, it may be appropriate to take public confidence into account and to make a finding of impairment in order to reaffirm the standards of the profession.

The Presenter submitted that your fitness to practise was impaired. These were highly serious allegations, and a failure to meet the relevant standards of practice. Your comments had fallen short of that standard. You had been trusted not to abuse or harm the young persons in your care, but you had pushed AA to the ground and kicked him repeatedly. You had called him "a prick" and had indicated that you would do the same again. You had demonstrated a lack of remorse, had breached the trust and confidence placed in you, and had lost your self-control resulting in violence. This suggested a serious underlying values issue, which would be difficult to remedy.

The Presenter noted that you had acknowledged your wrongdoing and had taken some steps to ensure it did not happen again. However, these steps were not satisfactory to fully remedy matters, and although there had been some indication of remorse, your comments immediately afterwards were concerning. It did not appear that you had fully recognised the seriousness of your actions. It appeared that you had been unable to manage at the time.

There had been stark and fundamental breaches of the underlying tenets of the profession. Service users are entitled to feel safe in your care, even when exhibiting challenging behaviour. You ought to have been able to manage difficult situations by use of your training. You ought to be able to control your own state of mind.

The Presenter suggested that these failures meant that section 10.6 of the Decisions Guidance (cases where more serious action may be required: behaviour that is fundamentally incompatible with professional registration) applied.

Your behaviour had resulted in some physical harm to AA. It was not pre-meditated. However, your reaction had heightened the situation. You had caused distress to other service users and to ZZ.

There was sympathy for your situation, but it could not be concluded that there was sufficient mitigation to significantly reduce the seriousness of the allegations. The SSSC could not come to a conclusion that there was a low risk of repetition.

The Presenter did acknowledge that it was an isolated incident of over a year ago. You had been in the role for four months and did not have a substantial period of practice in the role. It was noted that there had been positive

feedback from your colleagues and employer for the period prior to the incident. However, it did not take lengthy experience to understand that violent behaviour was not acceptable. The Presenter noted that you had previously worked with the elderly but there was no meaningful information about that to allow the SSSC to draw any conclusions.

You had acknowledged that you had lost control and had also acknowledged that perhaps residential child care was not the place for you, now or in the future.

You had attempted to blame your lack of training, the lack of support from your employers, the challenging behaviour of service users (which the SSSC acknowledged), and the failure of ZZ to provide assistance. However, you had provided no assurances about how you would manage such a situation in the future, or how you would remediate the behaviour.

The Presenter appreciated that there were particularly difficult circumstances in the pandemic, especially in relation to spitting. However, you were 52 years old, [Redacted], with training in your job, and an awareness of service users' triggers, and the experience to be able to manage the situation. There remained a risk of repetition.

You had been suspended, pending investigation by the SSSC, and had not been in a position to work in the sector since. You had indicated you did not wish to work in residential child care again, but you did wish to work with children. That might not require Registration with the SSSC. However, the SSSC considered there was a risk of harm if you were to return, and a high risk of repetition. The issues of self-control had not been addressed, and the SSSC could not be sure that the situation would not happen again.

Although the risk of repetition was high, there was no suggestion that there was a risk to the public at large, or to all service users. You were comfortable working with the elderly but struggled with residential child care, a challenging environment with challenging service users. The concern was about you working in this part of the sector.

There was a general public protection concern, and a public interest element to the case. The case risked undermining public confidence in the profession. There was a need to reaffirm standards for the public. A reasonable member of the public, with the information the Panel had, would be able to sympathise with you, but the behaviour still needed to be addressed robustly. Public confidence would be negatively affected if no action was taken.

The allegations had been proven. The behaviour was serious and not easily capable of being remedied. It had not been remedied. There was a risk of repetition. It was necessary to make a finding of impairment on public protection and public interest grounds, and to reaffirm public standards. You were currently impaired, on grounds of misconduct.

Finally, the Presenter indicated that he proposed to address the aggravating and mitigating factors referred to in section 8 of the Decisions Guidance at the sanctions stage of proceedings.

Your submission

You started by apologising if you had hurt AA. That had never been your intention. You went on to explain your comments at page 18 of the bundle when you had expressed regret at letting people down. That had been in the immediate aftermath of the incident. You had not meant to hurt AA. You had been scared. You had taken the role to help young people and had tried your best. The circumstances had not been good, and you had let everyone down. You offered a sincere, heartfelt apology.

You explained that the incident had had a huge effect on your family, and you. It had affected you financially. You played the scenario over and over in your head, and had [Redacted], which in fact had not helped. You had been frightened and continued to be frightened of repercussions for some time afterwards.

You confirmed that you would not behave in the same way again. You would not find yourself in that situation. You would not want a job like that again and would not stay in it. You would leave if you encountered such situations.

You were not a danger to the public. Previously, working with the elderly, you had been hit by a lady with Alzheimer's. You did not hit back as there were reasons for her behaviour. You would be no danger to the public or service users if you returned to work with the elderly again.

You were currently [Redacted]. You had done so for around 10 months. It was hard work, and you had a concern that the owner might retire soon. You would be looking for work and had in mind that you might return to working with the elderly. There were jobs available, and you had been contacted to see if you would be interested in returning to that role. You never wanted to work with children again after this experience. You had given up your childcare course as you were not of a suitable mental state to finish it.

At home, you had a wife [Redacted] to support. You also had an elderly mother-in-law, and other family of your own. You were the only one in employment.

Your previous job with Mears had been SSSC registered. A significant concern for you was that if your current Registration was removed, you might not be allowed to work in social services at all.

The Presenter was able to confirm his understanding that if you were removed from the Residential Child Care Workers part of the Register, it would remain open to you to apply for Registration on another part of the Register, but it was likely that the application would be referred to the Fitness to Practise

Department, who would look at all circumstances, including your (hypothetical) removal, and all comments made by the Panel in relation to that removal.

You provided the Panel with some information about your previous work placement as a teaching assistant but indicated that you had no intention of working with children again.

The Panel could be confident that the situation would not arise again as you would not return to childcare, but even if you did, your experience following this incident meant that you would now always simply walk away and let someone else deal with the situation.

Decision

The Panel decided that your fitness to practise is impaired on the grounds of your misconduct in respect of the allegations found proved.

Reasons

In reaching its decision, the Panel took into account its Findings of Fact, the evidence previously presented, all papers in the bundle, and the SSSC's and your submissions. It also took into account the case law referred to by the Presenter, the Rules, and the Decisions Guidance.

The Panel bore in mind the need for fairness and proportionality as set out in section 7 of the Decisions Guidance.

The Panel took into account the terms of Rule 2.1.:

"...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."

It also took into account the provisions of Rule 2.2., that your fitness to practise might be impaired by reason of any of five specified grounds, including misconduct.

The Panel kept in mind that impairment is a matter for the skilled judgment of the Panel.

The Panel firstly considered the allegations found proved, in the context of misconduct. That is the ground of impairment relied on by the SSSC.

In considering questions of misconduct, the Panel had regard to the views set out in the case of *Roylance*. It noted that there was no precise statutory definition of misconduct, but that the conduct should be serious and that it should involve some act or omission falling short of what would be proper in the circumstances.

The Panel considered your conduct in light of the Code. The Panel agreed with the SSSC that various parts of the Code had been breached. The Panel recognised that breaches of the Code do not automatically result in a finding that impairment exists, but that the Code sets out standards to be expected of social service workers.

The Panel then considered whether your behaviour as found proved, amounted to misconduct. It considered that the allegations were serious, consisting of an assault on a vulnerable young person and various concerning comments thereafter. There was some provocation and some mitigating circumstances, but the behaviour nevertheless fell short of the standards that would be expected of a social service worker in the circumstances. A social service worker would be expected not to harm a service user, even in circumstances of provocation. They would be expected to know how to handle the situation appropriately, including walking away if necessary. The behaviour had caused minor physical injury to AA and had upset him. It also had the potential to affect AA's future relationships with social service workers or figures in authority. The Panel, however, did not consider that the behaviour fell within the scope of section 10 of the Decisions Guidance, cases where more serious action may be required. The Presenter had suggested that it might fall within section 10.6, behaviour that is fundamentally incompatible with professional registration. Although there might be scope for saying that your behaviour was of that nature, the Panel did not consider that there was evidence that your values or attitudes suggested that you were unfit to be a member of a caring and responsible profession. The incident appeared to them to be a one-off event prompted by a variety of unfortunate circumstances. Weighing up all the factors, the Panel did not consider that this case fell within the scope of section 10 of the Decisions Guidance. However, it was serious and fell short of the standards to be expected. The Panel concluded that your behaviour did amount to misconduct.

The Panel next considered whether, in all the circumstances, your fitness to practise is impaired as a result of the misconduct. It bore in mind that it had to consider whether your fitness to practise is currently impaired. It also bore in mind that they were being asked to consider your fitness to practise in the part of the Register for Residential Child Care Workers. It was not being asked to consider your fitness to practise in other areas of social services.

The Panel had careful regard to the guidance in the cases of *Cohen* and *Grant*. It noted the need to take into account public protection, the wider public interest, whether the misconduct was easily remediable, whether it had been remedied, whether it was likely to recur, and whether you had demonstrated any insight. The Panel noted the need to consider current, rather than past, impairment. It noted in particular that the need to maintain confidence in the profession, and the need to declare and uphold proper standards so as to maintain public confidence in social services, were considerations that it was

proper to take into account in coming to a decision on whether your fitness to practise is impaired.

The Panel was of the view that issues of public protection were raised by the case. It considered that there was also a public interest in the allegations. It took the view that its Findings of Fact might affect public confidence in social services, and might affect the public perception of standards in the profession.

The Panel next considered the question of whether the conduct was remediable. The evidence, and the nature of the allegations, suggested to them that it would be difficult to remedy the behaviour, considering it in the context of residential child care services. It arose in a situation where you were unable to control your emotions and behaviour in the face of extreme provocation from a service user, and against a background of underlying stress. The Panel considered that the behaviour was specific to your performance in child care services, and on the evidence available to them, arose only in that context. The Panel was not convinced that the issue would arise in relation to other social service roles (for example, your previous role in care for the elderly). In the present case, however, the Panel concluded that it would be difficult to remedy the behaviour.

The Panel was not satisfied that the behaviour had been remedied. As it noted in the first part of the hearing, you appeared still to be suffering the consequences of the incident. You were still emotional, and it had clearly had a significant effect on you. You had not recovered, and the Panel considered that if you found yourself in a similar position again in future, you would find it extremely difficult to handle.

The Panel considered that the behaviour would be unlikely to recur. It came to this conclusion on the basis firstly that you had indicated that you did not plan to return to work in childcare. It did not consider it was likely to arise in any other context. Secondly, though, it also noted that the incident had had a profound effect on you, and it considered it unlikely that you would allow yourself to get into such a situation again. You indicated yourself that you would now walk away from any such incident. The Panel agreed that this was likely. The Panel also considered that the situation had arisen in circumstances where you had been stressed and emotional as a result of family circumstances, feeling targeted by service users, feeling unsupported in your role, having pressures as a breadwinner for your family, being very unhappy in your role, and the implications and effects of the COVID-19 pandemic. These had meant that when the incident had occurred, particularly when AA spat at you, you reacted in an inappropriate and uncharacteristic manner. The Panel considered that you had reached the end of your tether at a time when you were overwrought and stressed, rather than being a person who was unable to control their temper. Having made this assessment, however, the Panel did consider that such difficult situations would be likely to present themselves again if you returned to work in residential child care, and you would be faced with the challenge of actually dealing with them. Overall, there remained a risk of repetition if you returned to work in childcare, but the Panel considered that likelihood to be relatively low.

The Panel did consider that you had demonstrated insight. You had apologised both immediately after the incident, and at the hearing. You clearly appreciated that your behaviour had fallen below the appropriate standard. You had acknowledged that you had let everyone down.

You had also learned that there were consequences of such behaviour, for others and for yourself. You had resolved to avoid any risk of repetition by simply walking away. The Panel considered that resulted from a mature reflection of the events.

Furthermore, you had indicated that you had no intention of returning to work in childcare. The Panel accepted that as a genuine decision on your part. You had given up your course on childcare. You were clearly disillusioned with your experience in residential child care. The Panel considered that you had been unsuited to that role, and that with hindsight it had perhaps been a mistake to take the role on. You appeared to accept that you had not been suited to the role and had given evidence that you should have left the job earlier. The Panel considered that this demonstrated a considerable degree of insight into your own abilities and character, and a recognition that not all roles in social services would be suitable for you.

The Panel also gave some consideration to the various mitigating and aggravating factors set out in section 8 of the Decisions Guidance in assisting it to come to its decision. Some of these had already been considered by the Panel.

The Panel took note particularly of your previous history in care. There had been no previous incidents or concerns and your employers, both previously and Spark of Genius, had commented positively on your practice prior to this incident.

The Panel noted and gave considerable weight to the fact that this appeared to be very much a one-off incident, out of character, and provoked by a combination of circumstances. It noted that you were relatively inexperienced in residential child care, having been there only a few months, but did note that even an inexperienced Worker would recognise that the behaviour was unacceptable. There was a suggestion of a lack of support, and without having to determine the extent of the truth of that allegation, the Panel accepted that it was a genuine belief on your part. You had also given clear evidence, which the Panel accepted, [Redacted].

You had provided a number of testimonials or commendations from your previous employer. These were unconditionally positive, although they did not refer to your career in residential child care, and they pre-dated the incident. Nevertheless, they spoke to your character and abilities and tended to confirm the impression you gave the Panel in conducting your case. Your employers at

the time, Spark of Genius, had also commented positively on your abilities, as had your colleagues who gave evidence, apart from the incident in question.

The Panel did consider that the behaviour represented a serious abuse of trust. AA was a vulnerable young person with behavioural issues. He was entitled to expect that you would provide an acceptable standard of care, regardless of the circumstances. He was entitled to assume he would not be assaulted at his home by you. Your behaviour did not meet these standards.

The Panel concluded that there were many mitigating factors to your behaviour, as well as some aggravating factors.

The Panel concluded that the public protection concerns were relatively low. It was highly unlikely that you would return to practice in the residential child care sector. If you did return, there remained some risks. The Panel was of the view however that there did remain some public protection concerns.

The Panel noted that maintenance of public confidence in the standards of the profession, was a legitimate factor to take into account. It took the view that a reasonable member of the public, being aware of the information that had been in front of the Panel, would expect some steps to be taken in relation to your practice and would be concerned if the Panel were to decide that you could safely practise without any restriction. There were public interest concerns that the Panel had to take account of.

Weighing up all the circumstances and relevant factors, the Panel concluded that your fitness to practise as a Worker registered in the residential child care part of the Register, was impaired as of today's date. It is impaired on the grounds of your misconduct.

The Panel considered however that on the information available to it, it was unlikely that it would come to the same conclusion in relation to work you might wish to carry out, regulated under another part of the Register, such as working with the elderly.

Sanction

There were no further witnesses or documents produced for this part of the hearing.

SSSC's submissions

The Presenter reminded the Panel of the relevant Rules in relation to its consideration of sanction.

He asked the Panel to consider the various aggravating and mitigating factors set out in section 8 of the Decisions Guidance, and went through these for the Panel's assistance.

He suggested that there was some remorse, but little insight and that you continued to blame other factors for your behaviour. Your comments afterwards were concerning, and he considered this to be an aggravating factor.

Your past history in the role was so limited that it was a neutral factor.

He noted the heightened and charged atmosphere in the lead up to the incident. You were experiencing verbal abuse and spitting. The behaviour was not premeditated, but it was a disproportionate response. The Presenter regarded this as a mitigating factor.

There had been no real opportunity for you to demonstrate behaviour since the incident as you had been suspended from practice, and this was a neutral factor.

The incident had taken place in work, in a place where service users were entitled to expect to be safe, cared for and protected from harm. This was an aggravating factor.

There was no suggestion of duress.

Your references were not provided in a formal fashion, and referred to previous employment, but were favourable and acknowledged that there had been no previous concerns. The lack of information after the event meant that in his view these were of neutral effect.

The Presenter noted that you had cooperated with the SSSC and accepted that this was a mitigating factor.

It was clear that the incident was an isolated one, in the particular circumstances of the case. There was no indication of any pattern of behaviour. This was mitigating.

There had been some serious physical and emotional harm, and the possibility of damaging AA's trust in social service workers. You had also upset a colleague, and this was therefore an aggravating factor.

The Presenter did not consider that there had been any abuse of trust, and this was a neutral factor.

There had been no attempt to conceal matters, and this was also neutral.

The Presenter maintained, notwithstanding the Panel's views in relation to the question of impairment, that section 10.6 of the Decisions Guidance was applicable in this case, and that this was a case in which there had been behaviour fundamentally incompatible with professional registration, requiring more serious action.

The Presenter reminded the Panel of the case of *Gupta v General Medical Council* [2001] UKPC 61, which confirms that the primary purpose of sanction is not to punish a Worker, but rather to protect the public, and maintain professional standards and public confidence in the regulator.

The Presenter then took the Panel to section 13 of the Decisions Guidance and took them through the various possible sanctions, starting with the least onerous.

He submitted that it would not be appropriate to impose no sanction. There were no exceptional circumstances which would justify such a step.

A warning was not appropriate as the case was not at the lower end of the scale, and it would not address the issues identified in this case, including public protection. There had been insufficient insight on your part, and a failure to remedy the behaviour. There was a concern on the part of the SSSC that there were underlying values issues.

Conditions required to protect the public and address the public interest. This case did not fit with the situations in which the Decisions Guidance suggested conditions might be imposed. There had been violent behaviour and insufficient insight on your part. There had been no positive response to remedial steps and there were underlying values issues. It was not clear how conditions would be workable or enforceable given your intention not to return to residential child care. Conditions were therefore not appropriate.

A warning with conditions was not appropriate, for the reasons previously identified.

A Suspension Order would not realistically address the issues and was not appropriate. There were values issues, and a lack of insight, and it was not clear that a Suspension Order would resolve these.

A Suspension Order with conditions was not appropriate for the same reasons.

Removal was the appropriate outcome. There was no other way to protect the public or to maintain public confidence. Your behaviour was fundamentally incompatible with professional registration. There was serious behaviour. There was a lack of insight. There had been serious departures from the Code. There had been no evidence of remedial action. In any event, you did not intend to return to a role in that part of the sector. Section 10 of the Decisions Guidance also indicated that this was a case where removal may be justified.

The Presenter referred to the case of *Bolton v the Law Society* [1994] 1 WLR 512. This case noted that the most valuable asset of a profession is its collective reputation, which outweighs the fortunes of any one member. Membership of a profession brings many benefits, but that is part of the price. The Presenter

submitted that the interests of the public and the profession outweighed your personal interests.

He submitted that even with the mitigating factors identified, a reasonable member of the public would call the SSSC's regulatory system into question if the Panel failed to take appropriate action. Notwithstanding the sympathy that would be felt for you, the necessary and inevitable outcome was removal from the Register.

Your submission

You were asked what you thought the Panel ought to do in the circumstances of the case. You started by suggesting that the SSSC should look at introducing body cam equipment for some social service workers, in the same way as the police.

You then confirmed that you would never be in that situation again. You were happy working where you were at present. However, job security meant that you could anticipate wanting to return to work in social care. If you did, that would be likely to be working with the elderly, as previously. You had already been offered jobs in that sector.

You understood the need for restrictions on your practice. You were content for the Panel to ban you from residential child care. You noted in passing that you had got on well with the children at [Redacted] when you had worked there on a placement. However, you were not considering returning to work with children in any capacity. This experience had put you off working with children altogether.

You indicated to the Panel that your background originally was in engineering but there were no jobs in that line in Dunoon.

Otherwise, you were happy to leave the outcome to the Panel.

Decision

The Panel decided to make a Removal Order, removing your name from the part of the Register for Residential Child Care Workers, in terms of Rule 20.2.g.

Reasons

In reaching its decision, the Panel took into account its Findings of Fact, its decision on impairment, the evidence previously presented, all papers in the bundle, and the submissions from the SSSC and yourself. It also took into account the Rules and the Decisions Guidance. It had regard to the factors referred to at Rule 20.9.:

- the seriousness of your impairment of fitness to practise;

- the protection of the public;
- the public interest in maintaining confidence in social services; and
- the issue of proportionality.

The Panel took account of the Decisions Guidance, including sections 6, 7, 8, 10, 13 and 15.

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 judgment. The Panel recognised that any sanction imposed was not intended to be punitive in its effect, although it might have such consequences.

The Panel kept in mind its previous deliberations in respect of mitigating and aggravating factors as provided for in section 8 of the Decisions Guidance. It had concluded that your behaviour was serious, but with many mitigating factors together with some aggravating factors. The Panel had concluded that there remained some risk of repetition if you were to return to a job in residential child care, but that the likelihood of that was very low. There was some public protection risk, and public interest factors present.

The Panel noted the submissions of the Presenter in relation to section 8 of the Decisions Guidance. Having considered these, the Panel remained of the same views as previously expressed. In particular, the Panel was not persuaded that there were any underlying values issues. It considered that the incident arose as a one-off. It represented uncharacteristic behaviour prompted by a combination of contributory factors. You had reached the end of your tether but there was no evidence that your reaction was the result of values or attitudinal issues. The Panel also felt that your insight was better developed than was suggested by the Presenter.

The Panel considered again whether the behaviour fell within the scope of section 10.6 of the Decisions Guidance as suggested by the Presenter, as behaviour fundamentally incompatible with professional registration. As before, although acknowledging that the behaviour was serious, the Panel did not consider that it fitted the description set out in section 10.6. It did not feel that your behaviour, values or attitudes were such as to identify you as being unfit to be a member of a caring and responsible profession. There had been violent behaviour which might be categorised as physical abuse but not emotional abuse. The Panel did not consider that there was a serious or persistent contempt for the safety, rights and dignity of others. Nor was it appropriate to describe the behaviour as serious criminality. The Panel concluded that the behaviour, although serious, fell short of what was anticipated by section 10.6.

In its deliberations, the Panel kept in mind the need for public protection. It also bore in mind the possible effect of your actions on the reputation of the profession, the need to maintain its standards and the wider public interest. It kept in mind that it had to consider your interests, and any potential financial or

reputational effect on you, as part of a balancing exercise in ensuring that their decision was proportionate in the circumstances.

The Panel then considered the question of sanction. It started by considering the least restrictive outcome. The Panel took account of the information set out in section 13.2 of the Decisions Guidance. It kept in mind that it had to start by considering the least restrictive sanction first, and to continue working up each level of sanction until it arrived at the least restrictive level that adequately addresses the behaviour, and satisfies public protection and public interest concerns.

The Panel did not consider that it was appropriate to make no order. The behaviour was serious, and the case was not so exceptional as to warrant no action.

A warning alone was not appropriate. This was not a case at the lowest end of the scale. The Panel did not consider that it was appropriate that you could be allowed to return to work in residential child care without restriction. There were some public protection risks, and the Panel felt that the public interest also required a more substantial sanction to be imposed. There was some evidence of insight on your part, but little by way of remedial steps.

The Panel did not consider that conditions would address matters adequately. You had indicated emphatically that you did not wish to return to residential child care. You were not employed in that role and had no intention of doing so in future. In that circumstance, the Panel did not feel that conditions would be workable or enforceable. In any event, the Panel was unable to identify any conditions that could address the public protection risks they had identified. It was not convinced that conditions would satisfy the wider public interest issues it had identified.

A warning with conditions would not be appropriate. A warning was inappropriate for the reasons previously identified, and it was not the case that there was a particular area of concern that could be addressed by conditions in conjunction with a warning.

A Suspension Order was not appropriate in the circumstances of the case. Had you indicated a desire to return to residential child care, and in addition had a clear plan to remediate the issues the Panel had identified, it might have considered a Suspension Order to allow time for remediation. However, that was not the case, and the Panel could not conclude that your failings would be capable of being remedied by temporarily restricting you from practising.

As a Suspension Order was not appropriate, and no particular additional areas of concern that might be addressed by conditions had been identified, a Suspension Order with conditions was not appropriate.

Having ruled out all other options, the Panel therefore came to the conclusion that the appropriate sanction was a Removal Order. It did not consider there was any other outcome that would protect the public and maintain public confidence in the profession and the SSSC.

The Panel therefore decided to make a Removal Order, removing your name from the part of the Register for Residential Child Care Workers.

As previously discussed, and as raised by you in your submission, the Panel noted expressly that this outcome related only to your Registration as a Residential Child Care Worker. It was apparent that you might in future wish to apply for Registration in another part of the Register. If you do, the decision on that application will of course be for others to determine on its own merits. The Panel were at pains to stress however, that it had no evidence before it to suggest that your fitness to practise in other parts of the Register would be impaired, or that your removal from this part of the Register implied that you would be unsuitable for Registration in another part.

As a final point, the Panel noted your suggestion that consideration might be given to encouraging the use of body cam equipment by Residential Child Care Workers. The Panel had no information on the feasibility of this suggestion but thought it appropriate to record it for consideration by others.

Continuing TSO

The Presenter indicated that there was a TSO on your Registration, due to expire on 13 July 2021. He requested that this be extended to the end of July, to ensure that the protection it afforded remained in place until the Removal Order took effect, or any appeal was marked.

Having decided to make a Removal Order, the Panel agreed that it was appropriate to extend the TSO, so as to ensure that it remained in force either a) until the Removal Order came into force on expiry of the appeal period; or b) until you had marked an appeal and the necessary initial steps had been taken in that process. The Panel therefore extended the TSO until the end of July, as requested by the Presenter, in terms of Rule 16.