

**Outcome of Fitness to Practise Panel impairment hearing held on
Monday 25, Tuesday 26, Wednesday 27, Thursday 28 and Friday 29
March 2019**

Name	Jade Gibson
Registration number	3068515
Part of Register	Practitioners in Day Care of Children Services
Current or most recent town of employment	Dunfermline
Sanction	Warning to stay on their registration for a period of one year and condition imposed
Date of effect	21 April 2019

The Scottish Social Services Council (SSSC) Fitness to Practise Panel held on Monday 25, Tuesday 26, Wednesday 27, Thursday 28 and Friday 29 March 2019.

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 25, Tuesday 26, Wednesday 27, Thursday 28 and Friday 29 March 2019 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

At the hearing, the Panel decided that the allegations against you were proved, that your fitness to practise is impaired, and made the decision to impose a warning for one year and a condition on your Registration in the part of the Register for Practitioners in Day Care of Children Services.

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 November 2016 (the Decisions Guidance).

Allegations

The allegations against you were that on or around 29 November 2016, while employed as a Childcare Practitioner by Fife Council, at [information redacted] in Dunfermline and during the course of that employment, you did:

1. drag child AA (aged 13) across the floor
2. your actions at 1. above resulted in child AA having a friction burn on their back

and in light of the above your fitness to practise is impaired because of your misconduct as set out in allegations 1-2.

Findings of Fact

The Panel found allegations 1. and 2. to be proved.

Evidence led

The SSSC led four witnesses: YY, XX, WW and ZZ. You gave evidence on your own behalf.

YY

YY gave evidence by adopting her witness statement, F83–F91, and having supplementary questions put to her by the Presenter, your representative and the Panel. She worked in the out-of-hours school club, where you worked, and was working on the day in question. She spoke of AA being able to move herself across the floor by “bum-shuffling” which she described as sitting on the floor and moving across by putting her heels into the ground and propelling herself. She did not think that anyone could move AA without hurting themselves. She said that VV had looked after AA between 3pm and 4pm, before handing her over to you. VV had not mentioned any injury on AA before she handed her over to you. At 4:15/4:20pm, YY was in the shared area, while you were in the classroom with AA. She heard WW running down the corridor. WW came out of the classroom where you and AA were and asked where UU was. YY went into the classroom and saw AA sitting on the floor on the carpeted section of the room. There was nothing about AA’s manner which concerned her. YY confirmed that it was not unusual for AA to sit on the floor and refuse to move. She noticed a red mark/rash on AA when she took her to the toilet. It sat on her back, under her crop top and did not look the way her skin usually looks. It looked like little spots, with lines coming off it. She was sufficiently concerned to ask UU, her supervisor, to look at the mark. Her opinion was that anyone taking AA to the toilet would have noticed it. In cross examination, she confirmed that

AA would sometimes spin on the floor. However, she was not aware of her top riding up to expose her back on such occasions; and the mark she saw that day was different to anything she had ever seen before. The Panel considered this witness to be credible and reliable.

XX

XX gave evidence by adopting her witness statement, F93–F95, and having supplementary questions put to her by the Presenter, your representative and the Panel. She had been leaving school after work. It was dark and she was walking to her car, with the fence shown in the photo, W23, on her left. She said that the photo did not give a true representation of the view she had into the school: the fence was lower than the angle of the photo suggested. It was dark and she was able to see clearly into a lit-up classroom, which she said was around the width of the hearing room away from her. She saw you leaning forward, bent at the waist, with your arms outstretched. Your movements looked laboured. You were walking backwards. She thought you were dragging something but could not see what. She then saw you using sign language for “stand up” and thought that you were dragging a child. She remembered particularly your bent back and outstretched arms and emphasised the look of your movements being laboured. She ran into school to fetch WW and they both went to the classroom. AA was sitting upright on the carpeted floor and you were closer to the toilet area than you had been when she had seen you through the window. XX was shown your personal statement at F73. She strongly disagreed that what she saw was consistent with what you described there in your response to allegation 1. The Panel considered this witness to be credible and reliable.

WW

WW gave evidence by adopting her witness statement, F97–F101, and having supplementary questions put to her by the Presenter, your representative and the Panel. She confirmed that it was possible to see over the fence shown in W23 into the classroom, particularly if it was dark outside and the room was lit up. She spoke to XX coming into her office in “quite a panic” and saying that she had witnessed someone being dragged in some way. WW commented that XX’s manner was unusual and she therefore took the matter to be urgent. XX told her that she had seen you sign “stand up” and that you had appeared to be pulling an object. She and XX ran to your classroom and found you with AA. AA was sitting on the floor at the crest of the carpet and the lino, facing in the direction of the toilet, and you were sitting on a stool beside the toilet. AA did not seem upset and WW had not been “massively concerned”. When it later emerged that AA had a mark on her back which concerned her mother, WW had made enquiries of staff. She had spoken to TT, a pupil support assistant. She had done so because she wanted to rule out the mark having been caused by anything which had happened in school time before 3pm (as opposed to the out-of-hours club after 3pm). She asked who in school had carried out “personal care” for AA. It was TT. Personal care involved taking her to the toilet and

tucking her top into her bra when doing so. TT told her that she had lifted up AA's top and had seen no mark. WW could not recall if she at any point saw the mark on AA's back. However, she had seen the photo of it and it looked to her like a carpet burn. WW said that AA was large and heavy and difficult to move. She could be stubborn and refuse to move from sitting on the floor. Sometimes she would lie on her back and kick out at people. The Panel considered this witness to be credible and reliable.

ZZ

ZZ is the mother of AA. She gave evidence by adopting her self-prepared witness statement, F79–F81, and having supplementary questions put to her by the Presenter and your representative. She is a qualified and practising nurse with 27 years' experience. She saw the mark on AA's back for the first time on the evening of the day in question, when her husband (who was bathing her) drew it to her attention. She had taken a photo the previous evening of [redacted] on AA's back in order to show a GP colleague. The [redacted] was a condition which came and went and was characterised by lumpy skin which was not broken or blistered. What her husband showed her was completely different: it was lower down the back and did not meet with the area of [redacted]. It was fractionally over from the spine and around the size of the main part of her hand. She was clear that it looked like a friction burn: her husband plays football and she has seen many such marks on him when he has suffered friction burns from astro-turf. She took the photo at F57. She reported a friction burn the following day to the school and the out-of-hours club. This was before she knew of the alleged incident. The injury took around two weeks to heal. ZZ spoke to AA having a condition called [information redacted]. One of its characteristics is [information redacted]. People with this [information redacted] can have a high pain threshold. AA displays inappropriate emotions: for instance, she might laugh if she sees someone else crying. ZZ referred to her e-mail to RR at F55 in which she stated that AA's class teacher, QQ, had told her that there was no wound on AA prior to leaving school on the day in question. The Panel considered this witness to be credible and reliable.

Your evidence

You outlined your background and experience in childcare, which started in October 2015. You considered yourself to have had a good relationship with AA. On the day of the alleged incident, you had been working in the out-of-hours club. Your colleague, VV, had been looking after AA before you took over. She had not wanted to go to the toilet or the shared area but wanted to stay in the classroom. It was common for AA to refuse to move. Your relationship with her meant that you could often persuade her to go to the toilet or have a snack. Generally, you would speak to her and encourage her to move. Sometimes you would take her hands and encourage her to stand. She would sometimes be "giggly" when she refused to move, making it clear that she understood that she was supposed to move but was not co-operating. Sometimes she would spin on the floor. On this particular afternoon, she had been playing with a boy on the

floor. You described it as “rough-housing” and this was something she often did with that boy. The boy was younger and smaller than AA. When you took over from VV, AA was half-way across the carpeted floor. You had been trying to get AA to the toilet to wash her hands before snack and, potentially, to change her continence pad. You tried to get her to stand, giving her your hands. At that point, she was moving across the floor on her bottom. You said that you kept holding her hands. She was digging her heels into the floor, propelling herself along. Your feet were on either side of her hips, you moving backwards and she moving forwards. You had given her your hands. Her own hands were at her waist. You did not remember signing to her but might have done. You disagreed that what XX had seen was you dragging something; and that that “something” was, in fact, AA. As to her description of your movements being laboured, you volunteered that you suffered from [redacted], so something which would not be laboured for others would be laboured for you. You had been diagnosed in February 2017. You would not be able to move someone of AA’s size and weight. No-one had told you of any mark on AA before you took over. You would be surprised if she had suffered any injury when you were trying to get her to the toilet. You did not accept that you had dragged her or that you had caused the friction burn. At the very end of your evidence, in response to questioning from the Chair, you mentioned that, at one point, AA had “thrown herself” onto her back as you tried to encourage her to move across the floor. You were, of course, entitled to deny the allegations against you. However, the Panel was concerned that some of your evidence had the appearance of being self-serving. For instance, the photo at W23 which was produced by you has been taken at an angle which the Panel considers to be misleading. The fact that you suffer [redacted] has never been raised before. The Panel considered that your evidence in relation to the day in question was tailored to fit your version of events. Where, therefore, your evidence on what precisely happened in the classroom differed from other sources of evidence, the Panel preferred the other evidence.

Presenter’s submissions

1. The Presenter reminded the Panel that the burden of proof rested on the SSSC and that the standard of proof was on the balance of probability. The Panel had been provided with statements and other documentary evidence. No challenge had been made to the admissibility of any of the evidence and, accordingly, it was a matter for the Panel to decide what weight to give to each piece of evidence. The Panel would have to consider the credibility and reliability of witness evidence led. It should have regard to how evidence was given; whether witnesses appeared to be telling the truth; their demeanour; how well placed they were for giving objective opinions; any special knowledge they had; the accuracy or reliability of their evidence; whether what they said was probable or improbable; whether it was consistent with the facts of the case; and whether people had any motivation to lie.

2. He submitted that each of the witnesses led by the SSSC was credible and reliable. Each was placed to give an objective view. Each was consistent in their evidence and made concessions where appropriate. None, apart from ZZ, had any personal interest or motive in the proceedings. Even so, ZZ's evidence was restricted in essence to AA's injury. She had no motive that would call into question her credibility.
3. He highlighted the salient parts of the evidence on which he founded.
4. The first issue was that of the fence. It was clear from both XX and WW that the fence would not have impeded the view into the classroom; and their evidence should be preferred to your suggestion that a person's view might be impaired.
5. The next issue was to consider the movements described by you. The look of that particular manoeuvre would be considered different from the movement described by XX. The movement described by you would require rocking. XX had stated categorically that the type of movement described by you in your personal statement was not the type of movement she had witnessed. She was in no doubt that you were dragging something and had become concerned when she saw you sign "stand up". Why would you be signing to something other than a person to stand up?
6. The next issue was the nature of the injury. WW had viewed the injury on a photograph and may have seen it in person. What she had seen was not the same as the [redacted] AA was known to suffer from. YY had stated that she had not been told by anyone that AA had suffered an injury at any point before she took over AA's care. She too had seen the injury and stated that nothing had happened whilst she was looking after AA which could have caused that injury. Although AA could spin around on the floor sometimes, she had never seen a mark before, suggesting this mark was caused by something different.
7. ZZ had been clear on the injury: [redacted] could come and go but would be on a different part of AA's back. When she viewed the injury, the wound was the size of her hand. She was clear that it was a friction burn. She had this view before she knew of the allegation made against you. There was no doubt in her mind that the wound did not relate to [redacted]. The Panel should therefore accept that the wound was indeed a friction burn.
8. The Presenter submitted that, in light of the evidence of XX, your position lacked credibility. XX had clearly seen something in the classroom to cause her significant concern. She saw you dragging something in a laboured way. If things had happened as described by you, surely there would have been no labouring involved.
9. What the Panel had evidence of was a witness seeing something being dragged across the room. It had evidence of two witnesses seeing AA on

the carpet. It had evidence of injury very soon afterwards, whereas there was no evidence of injury beforehand. The injury was a friction burn and it was known that such can be caused by contact with carpets. There was a legitimate inference to be drawn that the evidence showed that you had dragged AA across the carpet and that she had suffered injury as a result.

Submissions on your behalf

1. Your representative invited the Panel to find that there were discrepancies in evidence which should lead the Panel to find the allegations not to be established. She said that there were no clear procedures in place as to how staff should assist children.
2. She highlighted the fact that that YY had said that not every member of staff might tuck AA's top into her crop top, so there was a possibility that the mark on AA's back had been there earlier in the day and had simply not been noticed.
3. She suggested that, since it was not disputed that AA often sat on the ground, her injury might have been caused that way. She could have got the mark on her back through moving around on the ground. She reminded the Panel that there was no evidence that AA had been distressed when seen by witnesses immediately after the alleged incident.
4. She invited the Panel to consider the fact that XX "may not have had a clear view" into the classroom, as she was looking through a garden area. She had not actually seen AA being dragged across the floor. In any event, a child of AA's height and build would be difficult to drag. The allegations were based on what XX thought she saw and your evidence should be preferred.
5. She asked the Panel to dismiss the case. She reminded the Panel that, on the assault charge arising out of this incident, you had been found not guilty. The alternative charge of culpable and reckless conduct had been found not proven. Your employers had allowed you to return to work in February this year.

Reasons

1. This case is predicated on AA having a friction burn. The Panel was particularly impressed by the evidence of ZZ in that regard. As a nurse of 27 years' experience, she might be expected to know the appearance of a friction burn. The fact that she had seen friction burns on her husband (gained through playing football on astro-turf) added weight to her evidence that what she saw on AA on 29 November 2016 was, indeed, a friction burn. She was able to describe it clearly. If that was not enough, WW also thought that the mark had the appearance of a friction burn. Doubtless, there are many causes of friction burns, but it is within the

knowledge of the Panel that friction burns can be caused by movement across a surface such as a carpet. That is not a matter on which expert evidence is required.

2. The material question is, then, when the friction burn was received. It was not there the evening before 29 November 2016, because ZZ spoke to having taken a photo (not produced) that night of the [redacted] on AA's back to show to a GP colleague. It must therefore have been acquired between the evening of 28 November 2016 and the following afternoon when it was seen by YY when she took over the care of AA at around 5pm.
3. The evidence of WW is important in relation to timing. She spoke to children, including AA, being taken to the toilet in school around 2pm to 3pm. She had spoken to TT, who had done this for AA. TT had tucked AA's top into her bra before changing her pad and had seen no mark. This evidence is, of course, hearsay. However, no objection was taken to its admissibility. Hearsay evidence is admissible and the weight to be given to it is a matter for the Panel. It is unfortunate that there was no written statement from TT and the Panel was not told what efforts, if any, had been made to secure her attendance. However, TT's statement to WW was made close in time to the events about which she was speaking. It is consistent with there being no mark the night before, as spoken to by ZZ. It was not suggested that TT had lied or had any reason to lie. The Panel was therefore satisfied that weight could be given to this piece of evidence
4. The Panel is therefore satisfied that there was no friction burn on AA when she finished school. Given that it was seen at the out-of-hours club, it is a reasonable inference that whatever caused it happened there.
5. It was not disputed that AA would sometimes spin on the floor. However, there was no evidence that that had ever in the past caused a mark such as was seen on her that day. The Panel considered your evidence that she was "rough-housing" with a boy that afternoon in the out-of-hours club. That is consistent with an entry in her care plan at F46. However, your evidence on this point seemed to the Panel to be inconsistent with the evidence that the focus on AA at that time was getting her to the toilet area to wash her hands. This was not mentioned in your Personal Statement Form to the SSSC dated 4 June 2018. In addition, there was no evidence that rough and tumble play had ever resulted in a mark such as this in the past.
6. Witnesses were, of course, clear that AA showed no distress when they came into the classroom. Given that AA does not display the emotions other children might due to her condition, that fact does not show that something untoward did not happen.
7. The Panel is conscious of the fact that children in the school and at the after-hours club are very closely supervised with a high staff to children

ratio. Given AA's limited mobility and the extent of supervision, it is scarcely conceivable that something could have happened to her, sufficient to cause that type of injury, which would not have been noticed by a member of staff. There was no such evidence.

8. The Panel found the evidence of what XX saw through the classroom window to be compelling. She was clear that she saw "something" being dragged by you and then saw you signing "stand up". That is consistent with the "something" being a child. When she and YY entered the class, you were there with AA and AA was on the floor. It is a reasonable inference to draw from that evidence that you had, in fact, been dragging AA at the point WW saw you through the window. That inference is further supported by the friction burn being seen on AA shortly afterwards.
9. The Panel has therefore concluded that the allegations are proved on balance of probability. It does not consider that you intended to harm AA in any way, but it is satisfied that the evidence shows that you, at some point, dragged her in an inappropriate manner, and that that dragging caused the injury complained of.

Impairment

1. You did not admit that your fitness to practise was impaired.
2. Having heard submissions and having asked questions of you, the Panel concluded that your fitness to practise is currently impaired.

Presenter's Submissions

1. The Presenter referred the Panel to Rule 2.1 as providing a definition of fitness to practise. Rule 2.2. sets out the grounds which may be relied upon. The relevant ground in this instance is misconduct.
2. He submitted that you had breached several parts of the Code, namely parts 1.4, 2.4, 3.3, 3.10, 5.7, 5.8 and 6.1.
3. When assessing the issue of fitness to practise, the Panel was reminded that what was being assessed was current impairment. In reaching its determination, the Panel should have regard to past behaviour, as well as information about a Worker's current situation. The cases 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) were referred to. By reference to the guidance proved by these cases, the Panel had to decide if your conduct has been remediated, whether it was remediable and whether there was a risk of repetition.

4. Section 6 of the Decisions Guidance set out the key purposes of SSSC decisions. Decisions were to be made: to protect the public; to uphold the public interest and to satisfy the interests of the Worker. Whilst decisions are not to be punitive, they may have punitive affect. Public confidence in the profession and in the SSSC as regulator must also be borne in mind.
5. He referred to Section 7.4. of the Decisions Guidance as setting out the principle of proportionality, requiring the interests of the Worker to be balanced with that of the wider public. Seriousness and any aggravating or mitigating factors were also to be considered.
6. The Presenter submitted that the allegations had been denied by you, through your personal statement form and at the hearing itself. It was submitted that you had not apologised. He accepted that there were comments in the Personal Statement Form that suggested insight. However, given the denial of the behaviour, any insight was limited. Additionally, your denial of current impairment called into question your level of insight.
7. He accepted that you had no previous disciplinary record. However, this incident took place in 2016 and you have had limited opportunity to remediate since then due to suspension from work. It was accepted that you have cooperated with the SSSC throughout this process. It was also accepted that this appears to have been an isolated incident.
8. Against that, your behaviour caused actual harm and injury to AA. There had been an abuse of a position of trust; especially given the vulnerable nature of AA. The Panel was asked to pay specific attention to this factor.
9. Service users had a right to expect to be treated with dignity and respect. You had dragged AA across the floor and this resulted in a friction burn. It was submitted that you put AA at a risk of harm and in fact caused actual harm. Regardless of intention, your actions had amounted to abusive behaviour.
10. The Presenter submitted that the public could not be assured that your fitness to practise was not impaired. Given your denial of the behaviour and the lack of insight, there was a considerable risk of repetition. If impairment had been accepted, then the risk might have been lower; but that was not the case here.
11. In conclusion, he submitted that a finding of current impairment was required to protect the public and as being in the public interest. There was a need to maintain confidence in the profession. The interests of the SSSC as regulator would be undermined if there were no finding of impairment.

Questions for you from the Panel

1. When asked what a reasonable member of the public would think of the conduct found to be proved, you said that the public would not think that that was something that should happen.
2. You realised that the allegations found proved could have caused pain to AA. Although the child cannot express her emotions verbally, pain is a natural result of physical injury.
3. You accepted that if you were culpable, then you would have been horrified that the child suffered pain. You would never wish a child in your care to incur harm.
4. When asked what you would do differently if faced with a similar situation in the future, you said that you would leave the child to sit and fetch someone more senior. You indicated that such an incident would be unlikely to recur in the future given that you no longer work with children with special needs. You currently work in a mainstream school. You also help out your friend with childcare for two-three days a month.
5. You said that you had learned that you should always follow a care plan to the letter and should never deviate from it. Anything unclear about it should be clarified. You realised that you would always have to be sure and confident about things before acting. You appreciated the need to use your own judgement appropriately. You reacted to a situation in a way you would not react again.

Submissions on your behalf

1. Your representative submitted that your fitness to practise was not currently impaired. The incident in question was an isolated one. It was not a malicious act, nor did you intend to inflict any injury. You have not faced any other allegation of this nature, nor any other allegation at all for that matter.
2. It was submitted that you did not, and do not, pose a risk to service users. You were, and currently are, a valued team member: children respond well to you and how you interact with them. You have worked with children and adults with special needs for several years.
3. Your representative argued that a finding of impairment of fitness to practise would impact on your career prospects. She suggested that your fitness to practise was not currently impaired and that it met the standard of conduct required to conduct your role safely. You were attending the

necessary courses to bring your conduct back to the required level since being suspended.

4. Your Personal Statement Form stated that you did not intend to harm AA, nor to cause injury or upset. There was an apology for your actions; it was never your intention to harm AA. You accepted that the techniques adopted in respect of AA were “perhaps not best practise”. In future, you would adopt a different approach.
5. In conclusion, it was submitted that it would be disproportionate to make a finding of impairment, given your representative’s argument that you do not pose a current risk to the public.

Reasons for decision

1. The Panel first of all considered the question of misconduct. It looked at the facts found proved against the provisions of the Code and decided that you had breached the following provisions:
 - 1.4: dragging AA demonstrated a disregard for her dignity
 - 3.3: you did not follow practices and procedures designed to keep people safe from abusive behaviour
 - 3.10: you failed to use responsibly the power you had over AA
 - 5.1: dragging AA amounted to both abuse and neglect of her
 - 5.7: your actions put AA and yourself at unnecessary risk of harm
 - 5.8: as a generality, your behaviour was behaviour which calls into question your suitability to work in social services
 - 6.1: by dragging AA, you failed to meet the relevant standards of work in a lawful, safe and effective way.
2. The Panel has had regard to the foregoing breaches of the Code. It has had regard to the definition of misconduct in the case of Roylance. It had no difficulty in concluding that your conduct on this one occasion fell short of what was proper in the circumstances. It amounted to misconduct.
3. The Panel went on to consider whether or not your misconduct amounted to current impairment of fitness to practise. As encouraged to do by the Decisions Guidance, it weighed up the aggravating and mitigating factors.

Mitigating factors

- You have fully engaged with the SSSC.

- You have no previous disciplinary record.
- At the time of the incident, you were not particularly experienced at working with children with additional support needs. You had worked with such children on a casual and then part-time basis for less than six months.
- You were noted by other Workers who gave evidence as having a good relationship with AA.
- The incident was an isolated one.
- You have been able to provide positive testimonials – although, given that one is from your sister and one is from a friend, they must be given more limited weight than had they come from more neutral parties.
- You have displayed some insight, regret and apology in your personal statement. In response to questions from the Panel you said that, if you had caused the injury to AA, you were “completely horrified”. You realised that AA could have been in pain, although she was not outwardly distressed.

Aggravating factors

Against the mitigating factors, the Panel identified the aggravating factors:

- Your behaviour amounted to an abuse of power and trust in relation to a vulnerable child who could not speak up for herself.
 - Your actions caused AA to suffer actual physical harm, though fortunately that resolved within a matter of weeks.
4. Whilst the mitigating factors outweighed the aggravating factors, the Panel is satisfied that your behaviour was serious: it caused actual harm. The Panel had regard to the test for impairment suggested in the case of Grant. It asked itself if its findings of fact showed that your fitness to practise is impaired in the sense that you have:
- (a) in the past acted and/or are liable in the future to act so as to put a service user at unwarranted risk of harm; and/or
 - (b) in the past brought and/or are liable in the future to bring the profession into disrepute; and/or
 - (c) in the past breached and/or are liable in the future to breach one of the fundamental tenets of the profession.
5. The Panel found that the answer to each of those questions was “yes”.
6. The Panel then considered the issue of remediation, as encouraged to do in the case of Cohen. It asked itself if the conduct it has found proved is easily remediable. It considers that such conduct is potentially remediable. It asked itself if the conduct had, in fact, been remediated. The answer to that question is “no”. That is not necessarily your fault: you returned to work only in mid-February this year and the Panel notes, with some

disappointment, that your employers appear not to have followed through the recommendation made by the Chair of their own disciplinary Panel that they discuss with you “appropriate advice and acceptable operating practice in the service”. It asked itself if there was a risk of repetition. There was nothing which would allow the conclusion that the risk of repetition is high. This whole process has plainly been a salutary experience for you. On the other hand, it cannot be said that the risk of repetition at this stage is so low that fitness to practise is not impaired.

7. In terms of public protection, the Panel considers that a finding of impairment of fitness to practice is necessary. Looking at the broader public interest, it is necessary for the public to have confidence in the social service workforce and in the SSSC as the regulatory body. The Panel considers that, if no finding of impairment were made, public confidence in the social services profession and in the SSSC as regulator could well be undermined.
8. Accordingly, it is the Panel’s decision that your fitness to practise is currently impaired by reason of your misconduct.

Sanction

The Panel is minded to impose a warning and condition. The warning will last for one year.

Submissions on Sanction

Presenter’s submissions

1. The Presenter referred the Panel to the options set out at section 13 of the Decisions Guidance. He referred the Panel to the aggravating and mitigating factors he had identified at the Impairment stage and incorporated these at this stage of his submission.
2. He submitted that the option of no sanction was not appropriate. It would only be in exceptional circumstances where no sanction would be imposed when the Panel had found a Worker’s fitness to practise to be currently impaired. Your misconduct had been serious and there was actual harm to the service user.
3. He submitted that a warning on its own was not sufficient: it was only appropriate where misconduct had been at the lower end of the scale
4. He submitted that conditions alone would not be sufficient. Guidance was set out at section 15 of the Decisions Guidance regarding types of conditions. Conditions should be workable and enforceable.

5. Whilst it was a matter for the Panel, the Presenter submitted that a warning and conditions should be imposed on your Registration. He suggested that a warning for around three years would be appropriate. An appropriate condition should be that further training on the moving and handling of children should be undertaken and that you should not undertake moving and handling until such training had been completed.
6. A Suspension Order was probably disproportionate: taking into account what the Panel had found at the Impairment stage, suspension would be excessive. Likewise, a Removal Order was not appropriate, this was reserved for the most serious cases.

Your response to questioning from the Panel

1. You agreed to answer questions from the Panel. You advised that, in your current employment, the after-school club had 17 children, but had capacity for 24. They were children who attended mainstream school.
2. In relation to moving and handling training, your employers did not require you to undertake this, since no moving and handling of children was required in your current role. You would, however, undertake any training required by the Panel.
3. You explained that you had been motivated to enter social care because it fitted with your degree qualifications. You enjoyed the role of caring for children and derived satisfaction from seeing children from the less able groups progress to higher classes. You also had caring responsibilities for your sister, who suffers from a neurological condition.
4. You were unsure what affect any sanction would have on your current employment and worried that it might have financial repercussions in the event that your employers refused to continue your employment.

Submissions on your behalf

1. Your representative submitted that no further action was required and asked the Panel to impose no sanction. She submitted that your misconduct had been at the lower end of the scale and that the incident was a one-off.
2. She argued that there was a low risk of repetition. There was no risk to the public. You had shown insight and had produced positive testimonials. She submitted that you respected the Panel and the reasons for its decision.
3. She urged the Panel, if it felt that a sanction was necessary, to impose a Warning for a period of six months, perhaps combined with a reflective account as a condition.

Reasons for Panel's decision

1. The Panel reminded itself that the purpose of sanction is not punitive, though sanctions may have a punitive effect. Rather, the purpose of sanction is primarily to protect the public and to protect the reputation of the profession.
2. The Panel had regard to the aggravating and mitigating factors of this case. These remain those identified in the Panel's decision on Impairment above.
3. The Panel had regard to the Decisions Guidance. Because of the aggravating factors set out in the Panel's decision on impairment, the Panel found this to be a case in which some action was required. The Panel considered that there would be a reasonable public expectation that a sanction would be imposed on you, given its findings on impairment. It did not therefore consider this to be a case where it was possible to decide to impose no sanction.
4. The Panel then considered the least restrictive sanction. It decided that a warning alone would not address adequately the impairment of your fitness to practise. Your behaviour was not at the lower end of the scale, as suggested by your solicitor. A warning alone would give no protection to service users, nor would it address the public interest in having confidence in the profession and in the SSSC as regulator.
5. The Panel next considered whether matters could be dealt with by imposing conditions alone. It decided that conditions alone would not adequately protect the public or address the public interest issue. It considered that the type of behavior displayed is something which can be addressed by conditions. The conduct found established was an isolated incident in an otherwise unblemished career. However, the public interest requires that something more than conditions alone are imposed: the public would expect to see some recognition that your behaviour was not acceptable.
6. The Panel then considered a warning combined with conditions. Whilst either of these measures alone would be insufficient for the reason stated, the Panel considered that a warning combined with conditions was the appropriate disposal. As to the length of the warning, the three years suggested by the Presenter is too long, whilst the six months suggested by your representative is too short. The Panel will direct that the warning lasts for one year.
7. The Panel deliberated on conditions which would provide reassurance to the public and service users. They have to be assured that you have reflected on your behaviour, that you have learned from it and that it will not be repeated. It considered whether conditions should involve training in the moving and handling of children. Given that you no longer work in a field

where that is required, such a condition did not appear to the Panel to be necessary. In any event, this was a case of not following procedure and of exercising judgement inappropriately, rather than disregarding previous training. Instead, it appeared to the Panel that a reflective account would be more appropriate; and that this would allow the SSSC, service users and the public to be satisfied that you have learnt from this experience and that future risk would be minimised.

8. The Panel will therefore impose the following condition, which it is satisfied is workable and enforceable:

Within three months you must submit a written reflective account to the SSSC, the content of which must be to the satisfaction of the SSSC. Your reflective account must specifically address:

- a. your reflection on the incident which occurred and the impact upon AA and her family;
 - b. how your behaviour breached sections 1.4, 3.3, 3.10, 5.1, 5.7, 5.8 and 6.1 of the Code of Practice for Social Service Workers;
 - c. what lessons you have learnt from the incident and what you would do differently in future;
 - d. how your role as a social service worker impacts on the people who use services you work with, their families, your colleagues and the wider public.
9. That concludes this determination.