

**Outcome of Fitness to Practise Panel impairment hearing held on
Monday 8, Tuesday 9, Wednesday 10 April and Wednesday 29 May 2019**

Name	Zoe Conway
Registration number	3115131
Part of Register	Support Workers in Care at Home Services and Support Workers in a Housing Support Service
Current or most recent town of employment	Prestwick
Sanction	Removal
Date of effect	22 June 2019

The Scottish Social Services Council (SSSC) Fitness to Practise Panel held on Monday 8, Tuesday 9, Wednesday 10 April and Wednesday 29 May 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 8, Tuesday 9, Wednesday 10 April and Wednesday 29 May 2019 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

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

Date of effect

The decision to impose a Removal Order comes into effect on 22 June 2019 or, if you appeal, once the appeal is determined or abandoned.

Your right of appeal

You can appeal against this decision to impose Sanction, in terms of Section 51 of the Regulation of Care (Scotland) Act 2001. If you decide to appeal it, you

must make the appeal to the Sheriff at Dundee Sheriff Court, Sheriff Court House, 6 West Bell Street, Dundee, DD1 9AD. You must make the appeal by 21 June 2019.

Matters taken into account

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

- the Regulation of Care (Scotland) Act 2001 (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 at the hearing were as follows:

On or around 10 June 2018 while employed as a Support Worker by Homecare by Hera Limited, and during the course of that employment, you did:

- a. during a telephone conversation with your colleague MM:
 - i. shout at MM
 - ii. swear at MM
 - iii. say to MM "I will kick you up and down the town" or words to that effect.
- b. engage in a personal confrontation with MM outside a service user's home at [information redacted], namely that you did:
 - i. shout at MM
 - ii. call MM "a cow" or words to that effect
 - iii. say to MM "you are lucky I am not caving your head in" or words to that effect
 - iv. push MM
 - v. punch MM to the face
 - vi. your behaviour at v. above caused injury to MM
 - vii. attempt to punch MM

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

Findings in Fact

Evidence led

ZZ

ZZ was referred to document F71; the statement given to the SSSC on 26 February 2019. She has been registered with SSSC for two years. She worked with you for four or five months and had worked with you closely twice a week. She stated that you were good at your job, had a bubbly personality and had no issues with you. ZZ was asked to refer to paragraph two of her statement at F71; she confirmed that she agreed with what was in the paragraph. She had had an issue with you where she had loaned you money, and you had "started screaming down the phone" about involving a senior colleague; she did not report your behaviour to anyone at the time and you had returned the money.

On 10 June 2018, ZZ picked you up from your home address before 7am; both of you were working together that day, your shift started at 7am. ZZ often picked up colleagues who did not own a car. You and ZZ were both employed as Support Workers; you provided personal care/medication to service users. There were breaks through the day, ZZ picked you up at 3.15/3.30pm and she noticed that you were upset. You were emotional/panicky but not angry. You told her it was due to a personal relationship issue. ZZ was sympathetic, you managed to compose yourself and continue working.

You attended a service users house; you had agreed to cover a nightshift that night for MM. You told ZZ you were not up to doing the nightshift because your mother was not keeping good health and you were worried about the relationship issue. Both of you were in the client's house, the service user was a vulnerable service user who had no mental capacity and poor mobility. ZZ was assisting the service user in the bathroom. She heard you speaking on your mobile phone to a manager about changing your night shift; you were told that MM was still on the rota to do this shift. ZZ then heard you speaking to MM on her mobile and she heard you say, "don't get lippy with me." Your tone was assertive; your voice was slightly raised. The telephone conversation lasted three to five minutes, ZZ did not hear you swearing and she did not hear the entire conversation.

You then spoke to ZZ, you appeared slightly annoyed and you told her that MM had refused to take back her night shift. Both of you had another service user to visit but you told ZZ that you wanted to speak to MM who was working in the house around the corner; you had checked the work app drop box to confirm that. ZZ was reluctant to do this and suggested that you visit the client first but

you told her that you needed to resolve the night shift issue with MM. She agreed to drive you to the house where MM was working.

She parked her car half way up the street, you got out of the car and went to see MM. She saw you standing speaking to MM, MM was standing in the service users garden and you were standing just outside the garden. Although she had the music on in the car she heard MM shout at you, "what age are you?" You replied 27 and then you walked back towards MM. She did not hear you shout at MM. She saw you raise her hand towards MM (she demonstrated this to the Presenter). She stated it was a sort of pushing motion, she did not see a punch, and it was more of a slap than a punch. She was asked whether she saw any physical contact between you and MM, she was not sure. She accepted that her view was not completely clear and she was some distance away.

You returned to ZZ's car, you were upset, not angry and you said that MM had "made you feel small." You told her things had got out of hand and that you told her you "should not have done what you did." ZZ did not report it but YY telephoned you a short time later. ZZ continued to the next service users house and went inside. You came into the service users house and you were crying. She said the service user had to console you. You told her that you were upset; YY had telephoned you and told you that MM had made a complaint about you assaulting her and you were worried about your job. ZZ was aware that MM had gone home after the incident as both of you had been asked to cover MM's clients.

ZZ stated that management had not spoken to her about the incident. The Presenter referred her to F31 and F32, the Incident Report Form. She confirmed that she had completed the form in the office the following day on 11 June 2018 around 2pm and handed it to the receptionist. She was asked to refer to part of her incident form at F32 where she said that you had told her that, "she had gave her a small push she called me pathetic so I hit her." She stated that she did not recall that being said. She stated that you had told her you had apologised and said it shouldn't have happened. You told her that you tried to call MM to apologise to her. She was asked to refer to F35, a typed statement; she had not seen this document before.

On being asked questions by the Panel, ZZ stated she was 23 years of age, she had worked with Hera Limited for 12 months but was starting a new job with First Home Care on 9 April 2019. ZZ accepted that she had a good relationship with you; you were slightly older than her, perhaps in your 30's. She was asked about the shift pattern that day; she stated you both started work at 7am and were due to finish at 9pm and there were regular breaks throughout the day. ZZ normally worked five or six days a week and saw between five to six service users a day. All the service users were elderly, the majority had poor mobility. If she was working with a colleague they generally worked together; she gave an example of this. If a service user needed to be placed in a hoist two Workers were required but at other times one Worker provided the client care and the other prepared the food and completed the records.

She was asked about the contact between you and MM and she accepted it was more of a slap than a punch. She stated that you completed your full shift that day. She was asked about why she completed the incident form F31; XX had asked her to complete the form. She also accepted that the date and time on form F31, 10/06/2018 and 1700 was when the alleged incident had occurred. She did not think that you did the nightshift later that night. She was 95 percent certain that the service user would not have heard you on the telephone to MM as he was hard of hearing. She accepted that she did not hear you shout, swear or make threats towards MM (as per allegation a.i., ii. and iii.).

She was aware that the client MM had been with was a service user who was registered blind. She accepted that when she was in the car she had the car door and windows closed but she could still hear MM shouting. ZZ stated it was likely that the service user would have heard what was said in the garden.

XX

XX was referred to her statement at F69-F70 and accepted it was hers; it was signed by her and dated 26 February 2019. She qualified as a Nurse in 1991, had a HND in Business Administration and a degree in Health Studies. She was the Owner/Manager of Hera Ltd since 2012; she also works as a Staff Nurse in a care home. She had no HR qualifications but was responsible for carrying out disciplinary hearings.

She was unable to say if she recruited you, you had started with the company two years earlier. You were employed as a Support Worker; she had not had any issues with your behaviour, although she recollected one occasion where you had called in sick half an hour before you were due to start your shift. She had regular contact with you, around once a week.

On 10 June 2018 she was not working. She received a text from MM stating that you had hit her; MM said she was bleeding and had a fat lip. MM had contacted the Deputy Manager YY and WW, the Team Leader already to advise them of this. MM had asked to be sent home and was sent home. XX said she would deal with matters the following morning; she sent you a letter telling you that you had been suspended. She asked you to submit a written statement.

XX also spoke to WW who confirmed that there had been an altercation between you and MM and you had hit her. She thinks she also contacted YY by text but could not remember the details of what was said. She advised MM to call the police; she was aware that the matter had been reported to the police. She saw a photograph of MM's injuries, the photo showed that MM had a swollen lip and her nose was bleeding. MM did not have any bruising, she did not seek medical attention. XX contacted staff members who had witnessed the incident to submit an incident form. She also asked you to complete an incident form. She was asked to refer to F39, she accepted this was the letter she sent to you suspending you; a disciplinary meeting was arranged for 20 June 2018.

XX had arranged a disciplinary meeting as she felt she had enough information before her that an assault had occurred. She thinks she spoke to you on the telephone; you told her that there had been a row about the night shift rota, you admitted that you had made a mistake; you had hit MM on the face. You also told her that MM had told you that "you were pathetic." XX was referred to F33; she accepted that this was her typed version of her summary of events, it was undated and unsigned. She accepted that at 1729 hours she saw the photograph of MM's injuries. MM had been a very dependable Worker, there had not been any previous issues between you and MM. She accepted at 1755 hours WW had sent MM home and she had been distressed. She had notified the SSSC and the Care Inspectorate about the incident. She accepted F37 was ZZ's incident report, she had typed this document. She accepted F35 was a typed version of someone's statement and F29 was MM's statement although it had ZZ on the form. She was asked to refer to ZZ's incident form; she accepted that ZZ had said that she had not seen anything. She accepted that F29 was MM's incident form; she had read this document and was satisfied that MM had been assaulted.

She was asked about the disciplinary meeting; you had attended the meeting with your senior, VV. She had conducted the meeting; at this meeting you told her that things had got out of hand, things had got heated, you admitted hitting MM and you had apologised to MM. She said that you told her MM had been lippy with you; she said you had been on Snapchat and things had got out of hand. She did not show you the photographs, but you admitted that you had struck MM on the nose and it had been bleeding. You were extremely emotional, you were very remorseful, you apologised, you stated that it was a "spur of the moment" reaction on your part and you wanted to continue working within the company but you were aware that your behaviour would have an impact on your employment.

On answering questions from the Panel, XX accepted that she did not take a note of the initial telephone conversation with you shortly after the incident, nor did she take a note of any telephone conversation about the incident with any members of staff. She had not been asked to submit the photographs of MM's injuries; she still had them on her phone. She stated that you had completed an incident form and this would be on file. She had carried out the disciplinary meeting with you and kept "personal" notes of the meeting.

On hearing this, the Panel adjourned briefly and considered that the photographs, your incident report and notes of the disciplinary meeting were relevant to establish what had occurred. The Panel agreed that they wished to have sight of these documents to assess the evidence and establish the validity of what had been said. The hearing reconvened and the Panel raised their concerns with the Presenter. The Presenter had no objection to the Panel asking XX to produce these documents. XX was asked about the documents and indicated that she could bring or email these documents to SSSC; the Panel

adjourned the hearing until the following day for these documents to be produced.

The next day, XX gave evidence by telephone and was asked further questions by the Panel. She produced a photograph of MM's injuries, her note of the disciplinary meeting but she was unable to find the incident form completed by you. These documents were added to the bundle as F75-F80.

XX accepted that there was no date or time on the photograph; she accepted that her notes of the meeting did not say anything about you admitting any type of assault or shouting, swearing or uttering threats. She accepted that in hindsight she should have had someone taking notes in order that she could conduct the meeting; she accepted that she had not asked you questions but simply allowed you to give a narrative of what had occurred. She accepted that you had not been suspended on the day the incident occurred. WW told you to finish your shift. She said this had not been her decision; the decision had been made by WW as it was late in the day and it would have been difficult to arrange cover for both you and MM.

She was unable to produce the incident report completed by you; on reflection, she accepted that you had not completed one at all and she was wrong about what she had said in her evidence the day before. She was asked to look at the typed notes of MM's statement where she had written that the service user had heard the commotion/allegation but she did not agree with this. She accepted that no risk assessment had been carried out in response to the incident including any risk you posed to service users as a result of your behaviour. She had no previous concerns about your behaviour.

She was certain that the service user would not have been aware of the incident because WW had spoken to the service user who had confirmed that. She was referred to F43, the dismissal letter sent to you and she accepted that there were inaccuracies in the sections of the Codes. She was referred to F57, your email to the SSSC, where you say you were asked to cover the nightshift; she did not agree that this had been the case. The Panel asked her specifically about health and safety procedures and whether an accident form had been completed. XX stated that in her view it was not necessary as no medical intervention had been sought by MM despite her injury.

XX was questioned about whether you had been asked at the disciplinary meeting about the alleged shouting, swearing and threats to MM; she accepted that she had not asked you. XX stated that you had been provided with the incident reports of ZZ and MM and had concluded that you had "put your hands up" and admitted to all the allegations contained within these reports. The Panel took her through her personal notes of the meeting and she was asked to say where your admissions were in respect of the shouting, swearing, threats and the assault; she accepted there were none in her report. In her view it was part of the same incident.

Panel's Assessment of the Oral Evidence Led

The Panel did not find ZZ wholly reliable or credible. There were discrepancies between her written statement and oral evidence. In her incident report given the following day, she stated that she herself did not hear any shouting, swearing, threats or see an assault, however, in her oral evidence she gave a different version. She stated she did hear MM shouting, even though her car door and windows were closed and she had the music on. She gave evidence that she saw you raise your arm; she did not see if there was physical contact but if there had been it would have been more of a slap and not a punch.

The Panel did not find XX credible or reliable; there were too many discrepancies between her oral evidence, her typed version of events at F33 and her witness statement at F69-F70. It is still unclear to the Panel whether the service user heard or saw the incident; in her statement at F70 she said that there was no impact on the service user, in her typed summary of MM's form she says she would have heard the shouting, but in her oral evidence she stated that there was no impact as WW had spoken to the service user. Under questions from the Panel, she was certain that you had completed and provided an incident report, however, the next day she could not produce one and stated she could not find it. She finally admitted that you had not completed one. In her oral evidence she stated that during the disciplinary hearing you admitted punching MM on the face and that it had been bleeding. However, in her personal notes there was no evidence that you had admitted any assault or referred to an injury. She was adamant that you were extremely remorseful on the telephone and at the disciplinary hearing you showed remorse and had been crying, but again, none of this is contained in her "personal notes".

The Panel had a number of concerns about the health and safety and risk management procedures carried out by XX. In the letter she sent to you there were glaring inaccuracies of the Code and XX could provide no justifiable reason as to why you were allowed to carry on working for the remaining four hours of your shift, given the serious nature of the allegations made against you. There were further concerns about the way the disciplinary procedure was carried out, the fact that no questions were asked, a note of answers not taken and no formal notes taken by you. In the Panels view, this whole chapter of evidence reduced her credibility even further.

Presenter's submissions

The Presenter asked the Panel to consider all evidence, including the oral evidence of ZZ and XX, the bundle of evidence and to find all of the allegations proved. She accepted that MM had not attended and given evidence but the Panel could consider her incident report form at F29-F30.

The Presenter was asked by the Chair whether she was insisting on all the allegations, she indicated that she was. She referred the Panel to Rule 32 and

submitted that all of the evidence had to be considered on a balance of probabilities. She referred to the case of *Re B [Children] [FC] [2008] UKHL 35*, a leading case on the balance of probabilities. She referred to the dicta of Lord Hoffman at paragraph 5 where it states that there has been some confusion “caused by dicta which suggests that the standard of proof may vary with the gravity of the misconduct alleged or even the seriousness of the consequences for the person concerned.” The Presenter referred to paragraph 13, and quoted from there, “that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not.” Lady Hale also made it clear at paragraph 70 that the standard of proof is the simple balance of probabilities, neither more or less.

The Presenter referred to Rule 32.1, s. 1 and 2 of the Civil Evidence [Scotland] Act 1988 which did not exclude hearsay evidence. She invited the Panel to consider that ZZ was reliable and straightforward but limited to specific allegations and her evidence was of limited assistance. The Presenter accepted that ZZ did not give evidence of allegations a.i. to iii. as she was engaging with a service user and the TV was on so she could not hear what was being said. She stated that ZZ had no axe to grind with you, she had not had any issue with you previously, although, there had been an unrelated non work argument where you had “screamed at her.” She invited the Panel to accept that ZZ had completed an incident report the following day. ZZ stated in her report that you had told her things had got out of hand and mentioned a push but this was different to what was said in oral evidence. The Presenter stated that this discrepancy could be explained given the passage of time, that she had been in her car, had a limited view and had not been paying attention. The Presenter invited the Panel to find allegations b.i. and iv. proved.

In terms of the remaining allegations, the Presenter was relying on MM’s incident report and the hearsay evidence of XX, although it was accepted that XX could not give direct evidence of any of the allegations. She invited them to consider F69, the incident report of MM, and accept this. She accepted that this evidence could not be tested as MM had not attended and given oral evidence. She invited them to consider F43, the dismissal letter sent to you and F33, the typed statement of PM, although it was accepted that it was unsigned and undated. The lack of admission by you was not a key issue, you had accepted the conditional compensation offer from Crown Office and Procurator Fiscals’ Office (COPFS) which outlined the charge of assault, punch on her head to her injury and you had paid this compensation offer. She accepted there was no date or time on the photograph, but this had been spoken to by XX and the incident form of MM. MM had reported the incident the same day, there had been no motivation for her to lie and ZZ had witnessed the assault.

The Presenter accepted that no notes had been taken by XX of the telephone call with you or full notes of the disciplinary meeting but XX had explained the reasons for this in her oral evidence. She accepted there were inconsistencies but those were not material and to be expected in such a case. She invited the Panel to accept that all the allegations had been proved.

The Panel's findings of fact

a.i. not proved

The Presenter was relying solely on ZZ who gave direct evidence about this as she was the only witness present (MM did not attend). The Panel accepted that MM had completed an incident form, this could be accepted as hearsay evidence but given that MM did not attend and her evidence could not be tested, the Panel did not attach any weight to it. The Panel noted that MM had not co-operated with the SSSC, had not provided a statement to the SSSC and did not attend to give oral evidence; there was no explanation given to the Panel about why she had not engaged or attended. ZZ did not mention anything about shouting in her incident report at F31 which was completed the following day nor at F71, a statement given to the SSSC on 26 February 2019. Yet in her oral evidence 10 months later, she was asked by the Panel directly whether there was shouting, and she replied there was "slight" shouting. Given the inconsistencies the Panel did not find this allegation proved.

a.ii. not proved

Reasons as above. Under questions from the Panel, ZZ stated she did not hear you swear at MM.

a.iii. not proved

Reasons as above. Under questions from the Panel, ZZ stated she did not hear you say to MM "I will kick you up and down the town" or words to that effect.

b.i., ii., and iii. not proved

The Panel did not have the benefit of hearing first hand evidence from MM; they accepted that she completed an incident form. The Panel accept there was an argument between MM and you. ZZ gave oral evidence that she was parked five to six car lengths away, had her car door closed, the window was closed and she was on her mobile phone; she did not hear you shout at MM, call MM a cow or say to MM "You are lucky I am not caving your head in" or words to that effect. She did however, say that she heard MM shout and a reply from you. There was conflicting evidence from ZZ and XX, as to whether the service user heard any of these allegations; in the circumstances it is unclear whether they would have.

iv. and vii. not proved

In relation to allegations iv and vii, the Panel heard no evidence of a push or an attempt to punch MM. ZZ gave evidence that you had raised your hand but it was more of a slap than a punch, but she did not say she saw you push MM or attempt to punch MM. Therefore allegations iv. and vii. are not proved.

v. and vi. proved

In relation to allegations v. and vi, ZZ gave evidence that she had a limited view of the assault, she was five or six car lengths away. She saw you raise your hand towards MM, it was not a punch but more of a slap. The Panel took into account the photograph of MM's injuries showing blood on MM's nose. There is a letter from the COPFS, F61, a conditional compensation offer which states that you assaulted MM and did punch her on the head to her injury. This was accepted by you and the compensation was paid. In the Panel's view, given your acceptance of the offer, this was strong evidence that this had occurred.

Given all the facts and circumstances the Panel accepted that it was likely that you did assault MM by punching MM and cause an injury and this allegation was proved.

Impairment

Decision

The Panel finds your fitness to practise is currently impaired.

Presenters submissions

The Presenter referred the Panel to Rule 19. She submitted the behaviour found proved meant you were currently impaired. She referred the Panel to the Code and that your behaviour breached Parts 2.2, 2.4, 5.1, 5.7, 5.8, 6.1 and 6.5 and this amounted to misconduct. She referred the Panel to the Decisions Guidance. She referred to the case of *Mallon v GMC [2007] CSIH 17* at paragraph 18 where it states that "misconduct denotes a wrongful or inadequate mode of performance of professional duty."

She referred to the case of *Roylance v GMC [NO.2] [2001] 1 A.C 311* at paragraph 51 where "misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances." The Presenter submitted that the behaviour found related to physical abuse towards your colleague. She referred the Panel to the oral evidence given by the witnesses. The physical confrontation you engaged in with your colleague occurred outside a service user's home. You had punched your colleague to the face resulting in her sustaining injuries.

The Presenter submitted that the behaviour is serious and involves you behaving in a physically abusive manner towards a colleague during the course of a work shift. She submitted your behaviour is not easily remediable. You have expressed remorse for your actions, which you acknowledge were serious and apologised to your colleague following the incident. You do not, however, provide any insight into the impact of your behaviour on your colleague. Your behaviour is fundamentally incompatible with Registration in that there was

violent behaviour involved. You had not attended the hearing and there was no recent communication from you.

The Presenter referred the Panel to the case of Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant [2011] EWHC 927 [Admin]; she referred to paragraphs 71 and 74; at paragraph 71 the need to protect the public and the need to declare and uphold proper standards so as to maintain public confidence in the profession. At paragraph 74, that the Panel should generally consider not only whether the practitioner continues to present a risk to members of the public in his or her current role

The Presenter submitted that this was an isolated incident, but it amounted to failings in fundamental values of the profession, given the loss of self-control and violent behaviour involved. Any repetition would place your colleagues, and potentially service users, at risk of harm. She submitted there is a risk that the behaviour could be repeated, particularly as you have demonstrated little reflective insight into your attitude towards your colleague and the impact of your behaviour on her.

There is a collective need to maintain confidence in the reputation of the profession and the public interest. A reasonable person would consider the reputation of the profession to be damaged and would expect the SSSC as regulator to take action against you.

The physical confrontation you engaged in with your colleague occurred outside a service user's home. Being physically abusive to a colleague while on shift is behaviour which would likely damage the reputation of the profession. A reasonable person, in possession of all of the information analysed above, would consider the reputation of the profession to be damaged and would expect the SSSC as regulator to take action against you.

Reasons for the Panel's decision

The Panel first of all considered the question of misconduct. It looked at the facts found proved against the Code and decided that you had breached Parts 2.4, 5.1, 5.7, 5.8, 6.1 and 6.5.

The Panel considered the definition of misconduct in the case of Roylance. It had no difficulty in concluding that your behaviour, punching a work colleague on the face, fell short of what was proper in the circumstances. Your behaviour amounted to misconduct.

The Panel went on to consider whether your fitness to practice is impaired. It considered the test of impairment in the case of Grant. They considered that; (1) confronting another colleague in the garden of a vulnerable service user's garden, (2) physically assaulting her, (3) whilst working a shift, (4) punching her and (5) causing her injury was a serious matter.

Given the location of the incident, within the garden of a vulnerable service user, there was the potential for the service user or a member of the public to have heard or witnessed this.

The Panel found that this behaviour fell short of behaviour which would be expected of a professional worker within the social service environment.

The Panel have no new information from you, there are no testimonials or references which could be taken into account. There is nothing to suggest you have taken remediable action to change your behaviour. There is no evidence to suggest that you have changed your behaviour or undergone any form of remediation. This behaviour is remediable but given there is no information from you about this at all, there is a risk that this behaviour could be repeated.

The Panel therefore found that your fitness to practise was impaired. In terms of 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; there was a lack of consideration of this during the incident. Public protection was an important consideration and your behaviour was such that it occurred within an area where a service user may have been exposed or witnessed this behaviour. This may have been an isolated incident, but the Panel's view was that there was no evidence that this behaviour could not reoccur. The Panels' view is that there was a potential that service users could be at risk in the future. In all the circumstances, the Panel concluded that your fitness to practice was impaired because of misconduct.

Sanction

The Panel decided to impose a Removal Order.

Presenter's submissions

The Presenter stated that the decision on sanction was a matter for the Panel exercising their skilled judgment. At this stage when considering sanctions, the Presenter submitted the Panel must have regard to the seriousness of the impairment, issues of public protection, the public interest, the maintenance of public confidence in the profession and proportionality with reference to Rule 20(9). The Presenter reminded the Panel of the previous submissions in relation to the seriousness of the conduct, the lack of proper insight and lack of remediation. The Presenter reminded the Panel of the fact the conduct found proved involves violent conduct towards a colleague outside of a service users home and that the Panel has found the conduct breached several parts of the Code. The sanction is not intended to be punitive although it may appear to a Worker to have that effect.

The Presenter submitted that the conduct found proved, together with the fact the Panel does not have any evidence from you that there would not be a repeat due to the lack of engagement, insight and remediation means public confidence

would be affected if you were allowed to remain on the Register. The Presenter also submitted that there were public protection concerns based on the nature of the conduct which was violent and aggressive, and which caused injury.

The Presenter asked the Panel to consider Part 8 of the Decisions Guidance, mitigating and aggravating factors. The Presenter submitted that public protection and upholding public interest clearly stated to be the overriding aims and, in these proceedings, mitigating factors are less likely to influence a decision maker where there are greater public protections and public interest concerns. The seriousness of the behaviour was also important, and in some circumstances, the conduct is so serious it indicates the Worker is fundamentally unsuitable to be registered and no amount of mitigating factors will change that.

The Presenter submitted there were very few mitigating factors in any event. There had been limited remorse demonstrated and there did not appear to be evidence of prior conduct, but of greater concern, was the lack of insight and engagement with the process. In addition, the Presenter submitted that you had substantially disregarded the Code, the behaviour was deliberate, and you were experienced enough to know not to behave as you had done. You also appeared to exhibit a loss of self-control and had no regard for your colleague or the fact this took place outside of a service users home.

The Presenter stated that there was no subsequent practice or behaviour to consider, the conduct was within work, and no references or testimonials had been produced. There had been no substantial reflection on the conduct provided for the Panel which may have satisfied them that this is unlikely to occur again because you truly understand the conduct and its impact on the colleague and the profession as a whole.

You had not co-operated in any meaningful sense with the SSSC. The Panel should also bear in mind the fact the conduct caused injury to your colleague and so harm was caused. In addition, while the conduct may be regarded as isolated, the Panel should note in the Decisions Guidance at section 8.9, that some isolated behaviours will be so serious that the most severe action needs to be taken. The Presenter submitted that you would have known that punching a colleague to the face could cause injury and such violent conduct towards a colleague in a public place meant that the conduct was particularly serious, and aggravated by the lack of any true insight.

The Presenter asked the Panel to consider section 10 of the Decisions Guidance, cases where more serious action may be required. In these cases, mitigation was less important because of the overarching need to protect the public and the public interest.

The Panel were referred to 10.6, the behaviour fundamentally incompatible with professional Registration, that "a workers behaviour values or attitudes may identify them as being unfit to be a member of a caring and responsible profession such as violent behaviour." In her submission, the Panel had clearly

found proved violent behaviour towards colleague MM and that such behaviour could be regarded as fundamentally incompatible with professional Registration, especially when the aggravating factors are already referred to are taken into consideration. The possible sanctions the Panel should consider were at section 13 of the Decisions Guidance and also in Rule 20(2). The Panel should start with the lowest level of sanction and consider each sanction and whether it is appropriate.

The Presenter referred the Panel to each sanction and the factors that they may consider relevant under Section 13.2 of the Decisions Guidance. She submitted that no action was not appropriate as action was required to protect the public and to address public interest concerns. She asked the Panel to consider her previous submissions on this.

She submitted that a warning for up to five years was not appropriate as this would do nothing to address the concerns of the Panel, nor would it protect the public or address public interest concerns. The conduct could not be considered to be at the lower end of the scale of impairment, there was no insight and remediation. A warning would not serve in any way to modify the behaviour or attitude.

Conditions or a combined sanction of conditions and warning was not appropriate; no workable or enforceable conditions could be formulated to address the Panel and the public concerns. The violent behaviour represented an attitudinal issue and conditions could not be formulated to address the change of attitude required. Nor was there any information to suggest that you would co-operate with any conditions imposed.

The Presenter submitted that a suspension order was not appropriate. There had been no insight or remediation demonstrated and the impairment was too serious to be addressed by suspension. The Presenter submitted that a Removal Order would satisfy public protection concerns and public interest concerns; it would also serve to maintain confidence in the profession and in the SSSC as regulator. She submitted that a Removal Order would be proportionate in all of the circumstances, taking account of the interests of you and the interests of the wider public.

Decision of the Panel

The Panel decided to impose a Removal Order.

The Panel considered Rule 8 of the Decisions Guidance, mitigating and aggravating factors.

1. Insight, regret or apology: there is no evidence before the Panel that you have taken steps to address your behaviour, no evidence of remediation. It is accepted that you have shown insight, you apologised to MM almost immediately after the incident occurred by telephone. You also accepted

your culpability during your disciplinary meeting ten days later where you were emotional, remorseful, apologised for the way you had behaved and stated that it was a “spur of the moment” reaction. Although you did not engage with the SSSC and take part in the proceedings you emailed the SSSC on 16 August 2018 accepting the seriousness of your actions and “deeply regretted” what had occurred.

The Panel accept that you did apologise for your behaviour shortly after the incident occurred. You also accepted a conditional compensation offer of £200 from the COPFS, dated 14 August 2018.

2. Previous history: it is accepted that this was an isolated incident, there had been no previous issues in respect of your behaviour with any member of staff.
3. Circumstances leading up to the behaviour: it is accepted that your behaviour was spontaneous, this is a mitigating factor. There was evidence, to a limited extent, that you were upset at the time because of a personal relationship and that your mother did not keep good health. However, this information has not been clarified or confirmed as you failed to engage with the process.
4. Length of time since the behaviour and subsequent practice: the incident occurred ten months ago; this is recent. You were made subject to a Temporary Order (TO) until 10 June 2019. You sent an email to the SSSC on 16 August 2018 saying that you had a new job. The Panel have no knowledge of what this new job is.
5. Conduct inside or outside work: the conduct occurred within work and this is an aggravating factor.
6. References or testimonials: you have not provided any new information.
7. Cooperation with the SSSC: you failed to engage with the SSSC in a meaningful way. It is accepted that you sent an email to the SSSC stating that you were not going to attend the hearing or engage in the process.
8. Isolated incident or pattern of behaviour: the Panel accept this was an isolated incident.
9. Consequences of the behaviour: the Panel did not hear directly from MM, but she sustained an injury and was unable to complete her shift that day. There was evidence that she had felt threatened by you at the time of the incident.
10. Abuse of trust: the Panel agreed that you failed to comply with the Codes. You failed to behave in a professional manner and assaulted a colleague. There was the potential for the vulnerable service user to be affected.