

**Outcome of Fitness to Practise Panel impairment hearing held on
Monday 29 and Tuesday 30 July 2019**

Name	Moses Ojo
Registration number	3080042
Part of Register	Support Workers in a Care Home Service for Adults
Current or most recent town of employment	Sutton
Sanction	Removal
Date of effect	22 August 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 29 and Tuesday 30 July 2019 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

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

Matters taken into account

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

- the 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 December 2017(the Decisions Guidance).

Allegations that your fitness to practise is impaired

1. The allegations against you are that on 17 December 2018 you were convicted at Hamilton Sheriff Court of a contravention of section 3 of the Sexual Offences (Scotland) Act 2009 in that:

between 20 August 2017 and 21 August 2017 both dates inclusive at Ballantyne Court Care Home, [address redacted], Larkhall you did sexually assault AA, c/o Police Service of Scotland in that you did without consent push her against a wall, kiss her on the lips, handle her buttocks, hips and waist and attempt to place your hands down her trousers, contrary to section 3 of the Sexual Offences (Scotland) Act 2009

2. on 17 December 2018 you were convicted at Hamilton Sheriff Court of a contravention of section 3 and section 7(1) of the Sexual Offences (Scotland) Act 2009 in that:

between 1 December 2017 and 2 December 2017 both dates inclusive at Abercorn Care Home, [address redacted], Hamilton you did sexually assault BB c/o Police Service of Scotland in that you did grab her leg, grab her from behind, put your hands inside her clothing, touch her breasts, kiss her chest area and kiss her breasts, touch her vagina over her clothing, touch her bottom, rub your penis against her bottom, stick your tongue down her throat, place your hand down inside her jeans, push her against a wall, and you did intentionally and for the purposes of obtaining sexual gratification or of humiliating, distressing or alarming her direct a sexual verbal communication to her in that you make sexual remarks to her all without her consent; contrary to section 3 and 7(1) of the Sexual Offences (Scotland) Act 2009

and in light of the above your fitness to practise is impaired by your convictions.

Findings of Fact

The Panel found the following facts proved:

1. You are registered on the part of the Register for Support Workers in a Care Home Service for Adults. You applied for Registration on 13 October 2016 and were registered on 14 December 2016. You have remained on the Register from that date to the present.
2. Between at least 14 September 2015 and 2 December 2017 you were employed as a Care Assistant/Support Worker by A24 Group Limited of 92-96 Lind Road, Sutton SM1 4PL.

3. Between at least 20 and 21 August 2017 you were employed to work at Ballantine Court Care Home, [address redacted], Larkhall.
4. Between at least 1 and 2 December 2017 you were employed to work at Abercrombie Care Home, [address redacted], Hamilton.
5. On 17 December 2018 you were convicted at Hamilton Sheriff Court of a contravention of section 3 of the Sexual Offences (Scotland) Act 2009 in that:
between 20 August 2017 and 21 August 2017 both dates inclusive at Ballantyne Court Care Home, 81 Ashgillhead Road, Larkhall you did sexually assault AA, c/o Police Service of Scotland in that you did without consent push her against a wall, kiss her on the lips, handle her buttocks, hips and waist and attempt to place your hands down her trousers, contrary to section 3 of the Sexual Offences (Scotland) Act 2009.
6. On 17 December 2018 you were convicted at Hamilton Sheriff Court of a contravention of section 3 and section 7(1) of the Sexual Offences (Scotland) Act 2009 in that:
between 1 December 2017 and 2 December 2017 both dates inclusive at Abercorn Care Home, [address redacted], Hamilton you did sexually assault BB c/o Police Service of Scotland in that you did grab her leg, grab her from behind, put your hands inside her clothing, touch her breasts, kiss her chest area and kiss her breasts, touch her vagina over her clothing, touch her bottom, rub your penis against her bottom, stick your tongue down her throat, place your hand down inside her jeans, push her against a wall, and you did intentionally and for the purposes of obtaining sexual gratification or of humiliating, distressing or alarming her direct a sexual verbal communication to her in that you make sexual remarks to her all without her consent; contrary to section 3 and 7(1) of the Sexual Offences (Scotland) Act 2009.

Evidence

There were no witnesses led in relation to this stage of procedure. The Presenter relied simply on the documentary evidence in the bundle.

Presenter's submissions

The Presenter referred the Panel to Rule 18 and Rule 15, which sets out the requirements of a three stage process, mentioned in the case of *Cohen v GMC* [2008] EWHC 581. She referred to Rules 32.11 and 32.12 and reminded the Panel that the burden of proof was on the SSSC and the standard of evidence was the civil standard, namely the balance of probabilities.

She then referred to Rule 32.8, which provides that the findings of fact and certification of conviction of a Scottish court are conclusive proof of the facts and conviction. She then referred to the copy Extract Decree from Hamilton Sheriff Court at pages 14 and 15 of the bundle. The wording of the allegations reflected the Extract Decree.

She submitted that the Panel should therefore find the allegations proved.

Reasons for the Panel's decision

The Panel considered carefully the submissions by the Presenter. They considered carefully all of the documentation in the bundle.

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

In relation to the allegations, the Panel noted that a copy Extract Conviction had been produced. In terms of Rule 32.8, this is conclusive proof of the facts and conviction.

The Panel were therefore satisfied, on the balance of probabilities, that the allegations had been proved.

Allegations found proved

Accordingly, the Panel found 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

A further set of papers was provided for the Impairment hearing. The Presenter led one witness, ZZ.

ZZ was the Criminal Justice Social Worker who prepared the report produced at pages 4 to 12 of the impairment bundle. In her evidence, she provided her views of Mr Ojo and referred also to her report. The report had been prepared in anticipation of the criminal court sentencing hearing.

ZZ had met with you for the purpose of preparing the report. She had had no prior involvement with you, and has had no involvement since, although one of her colleagues was involved in your supervision on an ongoing basis.

She confirmed, with reference to her report, that when she met you her view was that you had a poor attitude and had seemed evasive when addressing the offences. You had indicated that you were confused and did not remember the detail of the offences. You had sought to excuse your behaviour by blaming it on sexualised banter which you had taken too far (although it had ended before the offences); and by blaming it on cultural differences. You contended that in your culture, when a woman said no, she did not mean no, and a man could carry on regardless.

You appeared to have little or no insight into the effect of your behaviour on your victims, particularly not on the residents who you indicated (in an inappropriate fashion) were incapacitated.

Your attitude to females caused her particular concern. She had a fear that you were a risk of reoffending. Her view was that the reason for the offences was your own sexual gratification.

The Panel took the opportunity to make some enquiries about the system of supervision and ongoing assessment of you, although ZZ indicated that she was not involved in this.

Presenter's submissions

The Presenter provided the Panel with a detailed submission. She noted that Rule 2.1 sets out the meaning of fitness to practise, while Rule 2.2 sets out circumstances in which a Worker's fitness to practise may be impaired. The conviction in the allegation is the ground for finding that there is impairment.

She referred the Panel to the case of *CHRP v GMC and Biswas* [2006] EWHC 464 (Admin) in relation to the relationship between the proof of facts and impairment.

She referred the Panel to the cases of *Cohen v GMC* [2008] EWHC 581; *Council for Healthcare Regulatory Excellence v NMC* and *Paula Grant* [2011] EWHC 927 (Admin), paras 68-72, and the further cases referred to within it, for guidance on impairment. Other cases she referred to were *Yeong v GMC* [2009] EWHC 1923 (Admin), *Igwilo v GMC* [2017] EWHC 419 (Admin) and the Findings of the Shipman Report, referred to in the Grant case.

These cases set out that the Panel have to consider whether the conduct is easily remediable, whether it has been remedied, whether it is unlikely to be repeated and the seriousness of the conduct. They have to consider also the steps taken to remedy it, the public interest, public protection, public confidence in the profession and any insight. Impairment has to be considered as of the date of the hearing.

She referred the Panel to the Decisions Guidance and in particular to sections 6, 7, 8 and 10, which she took the Panel through.

The allegation was very serious with a number of aggravating factors and no mitigating factors. It fell within the provisions of section 10, which dealt with cases needing more serious action.

The case of *Burrows v General Pharmaceutical Council* [2016] EWHC 1050 (Admin) provided guidance on insight, regret and apology. You had not attended, which made it more difficult to assess insight. The case of *Kimman v GMC* [2016] EWHC 1808 (Admin) suggested that failing to attend a hearing was akin to professional suicide. In terms of Paragraph 8.1 of the Decisions Guidance, your lack of insight, regret or apology was an aggravating factor.

Other aggravating factors were that the behaviour was premeditated; that it had occurred inside work; that you had not co-operated with the SSSC; and there was a pattern of behaviour. The consequences were very serious, with potential for harm to residents. If no action was taken, the reputation of the profession would be adversely affected. This was an acutely aggravating factor. There was also an abuse of trust.

The Panel were referred again to the Cohen case. The behaviour could be remedied, but not easily. It had not been remedied, so far as the hearing was aware. The Criminal Justice Social Work report had assessed the risk of repetition as low, but the Panel should not be fettered by that view. It should make its own decision. There was no evidence of insight on your part. The SSSC's position was that the risk of repetition must be assessed as high.

Questions of public protection and the public interest also arose. The Panel were referred again to the Yeong case. The present case was likely to undermine public confidence in social service workers and the profession and bring the profession into disrepute.

The case of *Bolton v Law Society* [1994] 1 WLR 512 made the point that the collective reputation of a profession is its greatest asset and is more important than the reputation of any individual member. There would be concern if the SSSC did not act in the case of a social service worker found guilty of acts of fraud or dishonesty. This point was confirmed in the case of *Gupta v GMC* [2001] UKPC 61. This case also made the point that the Panel should not seek to punish you. You had been punished already in the criminal courts. The Panel's consideration should be the protection of the public, and the public interest.

The Panel were referred again to the cases of Grant and Igwilo. Trust in the profession would be undermined if impairment was not found in this case. The Presenter invited the Panel to make a finding of impairment.

In response to questions from the Panel, the Presenter undertook to make enquiries to ascertain: a) whether there was information from the employers about the original referral and any steps taken by them to investigate; b) whether information was available from the Criminal Justice Social Work Department about your current supervision performance; and c) why the case had taken so long to come to an Impairment hearing, noting in particular that the Temporary Suspension Order (TSO) appeared to have been allowed to lapse on 6 June 2019.

The Panel adjourned to allow investigation into these points.

On reconvening, the Presenter was able to confirm that she had spoken to YY, your current supervising Criminal Justice Social Worker. YY advised that you attended all appointments and complied with all requirements imposed on you. Your self-assessment was that you had changed your attitude and were a low risk. However, she noted that you still maintained that cultural differences were at the heart of the problem, and she was concerned about a continuing lack of empathy for the victims. You were unable to advise what had triggered your behaviour and she had concerns about its recurrence if a trigger could not be identified. She was also concerned that you had not mentioned today's hearing to her, although she considered you had a duty to do so. This hearing relates to the offences which she is dealing with.

In relation to employers, the Presenter advised that your employment was through an agency. Your role with the first employers had ended before the allegations were known, for unconnected reasons. The second employers had simply requested that there be no more placements for you and had not carried out an investigation. The Panel were concerned that your employer had a duty to report the allegations and wondered if the matter should be brought to the attention of the Care Inspectorate. The Presenter advised that the referral to the SSSC had been by the Care Inspectorate.

Finally, the Presenter explained that the case had followed fairly standard time frames. A hearing had been requested on 27 April 2019, which was not unreasonable, and the time thereafter had been normal. She confirmed that the SSSC had a system of prioritising progress in high risk cases.

Decision

The Panel decided that your fitness to practise is impaired on the grounds of your conviction as set out in the allegations.

Reasons for the Panel's Decision

In reaching their decision, the Panel took into account their findings of fact, the evidence previously presented, all papers in the bundle, and the SSSC's

submissions. They also took into account the case law referred to by the Presenter, the Rules, and the Decisions Guidance.

The Panel noted that in view of your absence, they did not have any submissions to counter those from the SSSC. There was limited information originating with you, in some instances provided by others. The Panel took care to ensure that they took into account any information shedding light on your position.

They bore in mind the need for fairness and proportionality, as set out in paragraph 7 of the Decisions Guidance.

The Panel considered that in giving evidence, ZZ spoke in a straightforward and credible manner. The Panel found her reliable and had no reason to doubt anything she said in evidence.

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".

They also took into account the provisions of Rule 2.2.e, that your fitness to practise might be impaired by reason of a criminal conviction. The allegations, which had been established, clearly fell to be considered as a criminal conviction.

The Panel considered the Code and took the view that the allegations demonstrated breaches of Parts 2.4, 5.1, 5.3, 5.7, 5.8 and 6.5. They took the view that your behaviour also breached Part 3.7 of the Code.

The Panel considered that the allegations were very serious and that you had fallen short of the standards of character, conduct and competence expected of a social service worker. They therefore concluded that your fitness to practise may be impaired.

The Panel next considered whether, in all the circumstances, your fitness to practise is impaired. They bore in mind that they had to consider whether your fitness to practise is currently impaired, as of the date of the hearing.

The Panel had careful regard to the guidance in the cases of Cohen, Grant and related cases. They noted the need to take into account whether the behaviour was easily remediable, whether it had been remedied, whether it was likely to reoccur, and whether you had demonstrated any insight. They noted the need to consider current rather than past impairment.

They noted, in particular, from the case of Cohen, the need to consider public protection and the wider public interest, including 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. These were

considerations that had to be taken into account in coming to a decision on whether your fitness to practise is impaired.

The Panel were of the view that the conviction, and the seriousness of the behaviour narrated in it, gave rise to concern that your fitness to practise may be impaired.

The Panel noted from the evidence of ZZ, and from the further information provided by your current Social Work Supervisor, YY, that there appeared to be little or no evidence of any insight or understanding of the effect of your behaviour. There appeared to be no understanding of the effect it would have on AA and BB, and no understanding of the effect on the residents in whose rooms it took place. Rather than acknowledging the offence, you appeared to have tried to deflect or minimise your responsibility. You had tried to blame the victims for sexualised banter and had blamed cultural differences. You had failed to persuade your Social Workers that there was any genuine insight or remorse. You had failed to attend any hearings or engage with the SSSC to explain your situation. The Panel did not accept that there was any genuine insight on your part.

The Panel agreed with the Presenter that it might be possible to remedy behaviour such as yours, but that it would not be easy to do so. Insight seemed to the Panel to be an essential part of remediation, and considerable effort would be required to turn around your attitudes. There was no evidence of either. You had "self-certified" to your Supervisor that you had done so, but there was no independent evidence to support this, and the Supervisor appeared to have her own doubts.

It seemed to the Panel that there was a significant risk of repetition. You had repeated the behaviour already. There was a pattern of behaviour which appeared founded on your attitudes and values. There was nothing to suggest that you had genuinely changed these attitudes and values. You appeared still to regard the behaviour as acceptable or excusable.

The Panel considered that the public required protection from such behaviour. It clearly raised issues of protection, both for work colleagues, service users and also the wider public. If the Panel considered that there was a risk of repetition, then protection was necessary.

The Panel considered there was also a clear public interest in the matters contained within the conviction. They took the view that the conviction was likely to affect public confidence in social services, and the reputation of the profession. They took the view that it was likely to affect the public perception of standards in the profession.

The behaviour reflected in the allegations was extremely serious.

The Panel then considered the mitigating and aggravating factors set out in Part 8 of the Decisions Guidance.

In relation to 8.1, insight, regret and apology, they noted as before, that there was little or none, and regarded this as a significant aggravating factor.

They regarded 8.2, previous history, as slightly mitigating or neutral.

In relation to 8.3, circumstances leading up to the behaviour, there were no mitigating factors, but the seriousness of the allegations and the need for a degree of premeditation or planning meant that this was a further aggravating factor.

The Panel did not regard paragraphs 8.4, 8.6 or 8.7 as relevant to your situation.

In relation to 8.5, they noted that the conduct had taken place inside work, indeed inside residents' rooms, and regarded these circumstances as particularly aggravating.

In relation to 8.8, co-operation with the SSSC, they regarded your lack of co-operation in the circumstances to be a further aggravating factor.

In relation to 8.9, they noted that there appeared to be a pattern of behaviour, with two sets of convictions for separate offences, against different workers, in different workplaces. They regarded this as a further significant aggravating factor.

In relation to 8.10, consequences of the behaviour, they noted the serious consequences for your fellow workers, for the residents, and for the reputation of the profession. They regarded this as another serious aggravating factor.

In relation to 8.11, they took the view that there had been a breach of trust and that this was a further aggravating factor.

They did not consider that 8.12 applied to your case.

The Panel also considered Part 10 of the Decisions Guidance and took the view that your behaviour could be considered to fall within paragraphs 10.1 (sexual misconduct), 10.2 (sex offenders), 10.5 (abuse of a position of trust), and 10.6 (behaviour fundamentally incompatible with professional registration). They therefore took the view that the behaviour might be regarded as more serious.

The Panel therefore came to the conclusion that your fitness to practise was impaired, by reason of the conviction. They believed that the wider public would be concerned about the fitness to practise of a social services worker who had been convicted of the offence.

The Panel had little information about your current circumstances so far as relating to the allegations. The information they had tended to support their views expressed above. The Panel concluded that your fitness to practise as a social services worker was impaired as of today's date.

Taking into account all the factors indicated above, the Panel concluded that on balance your fitness to practise is currently impaired. It is impaired on the grounds of your conviction.

Sanction

In light of the Panel's decision that your fitness to practise was impaired, the Panel went on to consider the question of mitigation and sanction.

Evidence

There were no new papers and no witnesses were led.

Presenter's submissions

The Presenter reminded the Panel of the provisions of Rule 20. She reminded them that they ought to have regard to the Decisions Guidance, and if they depart from it, they should give their reasons for doing so. She reminded them that sanction was not intended as a punitive tool, although it might have that effect. She reminded them that they had to balance the need for public protection, the wider public interest, and the reputation of the profession, against your interests.

She adopted her previous submissions in relation to Parts 8 and 10 of the Decisions Guidance and asked the Panel to keep in mind their own findings on these matters in the impairment part of the process. She asked them to keep in mind, in particular, their finding of a lack of insight on your part.

She reminded them, with reference to the case of *Bolton v Law Society* [1994] 1 WLR 512, that the reputation of the profession is more important than the interests of any one of its members.

This was a case in which the public would be very concerned. A reasonable person in possession of all the facts would be very concerned if no sanction were imposed. The reputation of the profession could be jeopardised if no sanction were imposed.

She then took the Panel through the various possible sanctions and considered each of them, in light of the guidance in paragraph 13.2 of the Decisions Guidance, starting with the least restrictive and working upwards. She concluded that the appropriate level of sanction was removal and invited the Panel to make a Removal Order.

Your own interests in being able to practise your chosen profession, and any reputational or financial consequences to you, were outweighed by the need for public protection and the wider public interest, and removal was the appropriate sanction.

Decision

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

Reasons

In reaching their decision, the Panel took into account their findings of fact, their decision on impairment, the evidence previously presented, all papers in the bundle, and the Presenters submissions. They also took into account the Rules and the Decisions Guidance. They 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 Parts 6, 7, 8, 9, 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 their 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 their previous deliberations in respect of mitigating and aggravating factors, as provided for in Part 8 of the Decisions Guidance.

The Panel also had regard to Part 9 of the Decisions Guidance (criminal convictions) and noted that they should not rely on the sentence imposed by the criminal court. They accordingly did not do so. They were unaware of the circumstances pertaining in court when the convictions took place.

They took into account the relevance of Part 10 of the Decisions Guidance to your case, as considered by them previously in relation to impairment.

They also bore in mind the effect of your actions on the reputation of the profession, the need to maintain its standards and the wider public interest.

The Panel then considered the question of sanction. They started by considering the least restrictive outcome. The Panel took account of the indicative factors set out at paragraph 13.2 of the Decisions Guidance.

The Panel then considered the various sanctions available to them. They had regard to section 13 of the Decisions Guidance, to assist them.

They kept in mind that they were expected to start by considering the least restrictive sanction first, and to continue moving up each level of sanction until they arrived at the level that they considered to be appropriate.

The Panel did not consider that it was appropriate to make no order. The behaviour was very serious and the public interest required some sanction to be imposed.

A warning was not appropriate. The Panel did not consider that this was a case at the lower end of the scale. They did not consider that it was appropriate that you could be allowed to return to work in the sector without restriction. There was a serious issue of public protection. There was no real insight and no remedial steps had been taken by you.

The Panel did not feel that conditions could appropriately be imposed. The behaviour appeared to be based on your attitudes and values. The Panel did not consider that conditions could address this. They were unable to conceive of any appropriate conditions that could be drawn up. You had not engaged with the SSSC. Your co-operation was essential in making any conditions successful, but this could not be assured. You had been subject to sanctions by the criminal courts that included supervision and the Panel had heard doubts about how effectively that was progressing.

For the same reasons, a warning and conditions was thought inappropriate.

The Panel did not consider that suspension would address matters adequately. They did not consider that there was anything to suggest that your failings were realistically capable of being remedied by a temporary restriction from practice. They had serious concerns about your underlying attitudes and values, and there was no real indication of insight or regret. They did not feel that this could be said to be a case which was not so serious as to justify removal.

A suspension and conditions order was not appropriate for the reasons set out for each, above.

The Panel therefore concluded that the only appropriate order was an order for removal from the Register. They noted from the Decisions Guidance that "a Removal Order may be appropriate when the worker's behaviour is fundamentally incompatible with being a social service worker and involves any of the following.

- Serious, deliberate, grossly negligent or reckless act(s) or omission(s)
- A significant abuse of trust
- Persistent lack of insight into seriousness of actions or consequences
- A serious departure from the relevant professional standards set out in the Codes
- A pattern of unacceptable behaviour
- No evidence that there is likely to be remediation"

The Panel considered that all of these considerations appeared to apply in your case. They were satisfied that a Removal Order was therefore appropriate.

They were satisfied that this was a proportionate and reasonable outcome. Public protection, the public interest, and the maintenance of the reputation of the profession, required a Removal Order. This outweighed the potential impact of such an order on your own interests.

The Panel accordingly decided to make a Removal Order.