

Outcome of Fitness to Practise Panel impairment hearing held on Monday 4, Wednesday 6, Monday 11 and Wednesday 13 December 2023

Name	Anthony Ross
Registration number	3101843
Part of Register	Support Workers in a Housing Support Service
Current or most recent town of employment	Edinburgh
Sanction	Warning to stay on your registration for a period of 48 months
Date of effect	04 January 2024

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

1. 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 4, Wednesday 6, Monday 11 and Wednesday 13 December 2023 by video conference.
2. 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 warning on your Registration in the part of the Register for Support Workers in a Housing Support Service for a period of four years.

Matters taken into account

3. In coming to its decision, the Panel had regard to these documents:
 - the Act
 - the Code of Practice for Social Services Workers Revised 2016 (the Code)
 - Scottish Social Services Council (Fitness to Practise) Rules 2016 as amended by the Scottish Social Services Council (Fitness to Practise) (Amendment) Rules 2017 and 2021 (the Rules)
 - Decisions Guidance for Fitness to Practise Panels and Scottish Social Services Council staff dated November 2016 (the Decisions Guidance).

Allegations

4. The allegations against you were that while employed as a support worker by the Salvation Army at The Pleasance and during the course of that employment you did:
 1. on or around 16 September 2020 in relation to service user AA displaying challenging behaviour:
 - a. walk towards AA and bump into him with your torso
 - b. shout at AA
 2. on or around 4 June 2019 in response to service user BB being verbally abusive towards you:
 - a. argue with BB
 - b. go to up BB's face and state to BB if he didn't stop you were going to batter him, or words to that effect

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

Representation

5. The SSSC was represented by ZZ, trainee solicitor (the Presenter).
6. As noted below, you were not present or represented at the hearing.

Findings of Fact

7. You were not present, and the Panel was therefore unable to ask if you admitted any of the facts alleged.

Allegation 1.

8. Allegation 1.a. – the Panel found this allegation not proved. The primary evidence which was relied upon was the CCTV footage. This contained recordings from two different angles, one behind the reception desk, and the other looking along the corridor, past the reception desk. The Panel did not consider that it was relevant for witnesses to be asked to interpret what they saw on the CCTV footage. The Panel was in as good a position to view and interpret the footage as anyone else, and it was the Panel's role as decision maker to view and assess the footage.
9. As is often the case, the CCTV footage does not accurately record the images, in the sense that it records a certain number of images per second.

The actions of persons in the footage therefore appear to 'jump'. The Presenter clarified for the Panel that his case was that you intentionally bumped into AA with your torso. Having carefully reviewed the footage the Panel was not satisfied that the footage showed intentional contact between you and AA. The Panel took account of what you are noted as having said in an interview with your former employers on 26 October 2020. In the meeting note, you are recorded as saying you did not know if you had made contact, that you were not sure that you had, that you did not intentionally go to make contact, and that you had accidentally walked into the service user.

10. The evidence from YY did not assist the Panel on this matter. He was not present and did not witness the event. The Panel did have hearsay evidence from XX, who was at the reception desk on the phone during the events. However, in the note of meeting of her interview with the employer, she said that you might have made physical contact with AA, that she thought your chest and AA's chests collided, but she could not say who did what first. After being shown the CCTV footage, she said this confirmed that she did see you and AA touch. However, as already noted, it is for the Panel to assess the CCTV evidence. It places no weight on XX's interpretation of that evidence. Similar points arise in relation to her statement to the SSSC.
11. In summary, this allegation was found not proven, due to questions regarding the quality and reliability of the CCTV evidence.
12. Allegation 1.b. – the Panel decided this allegation was proved. In your interview with your former employer, you admitted that you had shouted at AA. The hearsay evidence from XX also substantiated this allegation.

Allegation 2.

13. Allegation 2.a. – the Panel finds this allegation proved. The Panel heard evidence from WW who was present at the time of the events. Her oral evidence and her statement to the SSSC broadly supports that there was an argument between you and BB. The Panel was not able to place much weight on the document which is headed 4 June 2019 and purports to recount what occurred. YY was very unclear as to when that document had been created or if it had been created by him, after discussion with WW. WW was also unclear about its provenance. She recalled sending an email to YY within a day or two of the incident. The document looked similar to what she had said in her email. The Panel therefore preferred to rely on the oral and written evidence from WW.
14. WW is no longer registered with the SSSC and had no obligation to attend as a witness. She gave her evidence in a straight-forward manner. There was no elaboration or exaggeration of the incident. She was willing to accept that she was uncertain of how the document headed 4 June 2019

came to be drawn up. The Panel had no reason to doubt her credibility or reliability.

15. The Panel would simply observe that, although at the fact-finding stage it is not considering conduct, arguing with a service user is a not uncommon occurrence.
16. Allegation 2.b. – the Panel finds this allegation proved. The oral evidence from WW was that you had said the words ‘I am going to batter you’ to BB. Her SSSC statement also provided evidence in support of this allegation, including that you were very close to BB when you said those words. As already noted, the Panel found her to be a credible and reliable witness.

Impairment

17. You were not present at the hearing and had not admitted that your fitness to practise is currently impaired.
18. Rule 19. sets out the procedure for considering impairment. The Panel must consider whether your fitness to practise is impaired and, if so, on what ground. The Presenter’s submission was that although the facts found proved amounted to misconduct, your fitness to practise was not currently impaired.
19. In support of that submission, the Presenter referred the Panel to section 7 of the Decisions Guidance and the aggravating and mitigating factors set out there. He pointed to the context in which allegation 1.b. had taken place and said that there were mitigating factors in relation to it. Likewise, the incident in allegations 2.a. and 2.b. took place against the background of sustained verbal abuse of you by BB. Your actions were provoked by that serious verbal abuse, and there were, he said, mitigating circumstances. Overall, the allegations were assessed as being at a low level of seriousness and were capable of being remedied.
20. In terms of remediation, the Presenter said that there were no other incidents over a period of employment of seven years. He noted the reference from YY which describes changes in your practice after the incidents. His submission was that the behaviour in the two incidents had been remedied and was unlikely to be repeated. Your fitness to practise was not currently impaired.

Panel’s decision

21. Contrary to the Presenter’s submissions, the Panel is satisfied that your fitness to practise is currently impaired on the grounds of misconduct for the following reasons.

22. Looking firstly at whether the behaviour amounts to misconduct, the Panel is satisfied that it does. In *Roylance v General Medical Council* [2000] 1 AC 311 the court said that:
- “Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required to be followed by a medical practitioner in the particular circumstances” (page 331 B-C).
23. That case therefore makes clear that misconduct can include acts and omissions; it depends on what is proper in the circumstances; and Rules and standards such as the Code will be relevant.
24. In *Mallon v General Medical Council* [2007] SLT 372, the court said: “The decision in every case as to whether the misconduct is serious has to be made by the panel in the exercise of its own skilled judgment on the facts and circumstances and in the light of the evidence” (paragraph 18).
25. The Panel considered each of the allegations. The conduct in allegation 2.b. is a very serious matter. Threatening a service user with violence can never be an acceptable way of acting for a social services professional. The Panel did not consider that arguing with BB was in itself a serious matter which involved misconduct. There are many circumstances in which a social services professional may legitimately argue with a service user. Indeed, in allegation 1.b. there was clearly an argument between you and AA. What was unacceptable was you shouting at AA. That was not acceptable conduct for a social services professional. Taking allegations 1.b. and 2. together, the Panel decided that your conduct in respect of those allegations fell far short of what would be regarded as proper in the circumstances.
26. The Panel then considered the various parts of the Code which are referenced in the Initial Notice of Referral, and the reasons set out there. It also had regard to other parts of the Code. It considered that there were breaches of the following parts of the Code in respect of the following allegations:
- Part 1.4 – as regards allegations 1.b. and 2.b. This part of the Code requires Workers to respect and maintain the dignity of people who use services. The threat which you made to BB was not respectful in any way. The shouting (in allegation 1.b.) and the context in which it took place, was not a respectful way of interacting with a service user.
 - Part 2.2 - as regards allegation 2.b. only. The way in which you communicated with BB was self-evidently not appropriate.

- Part 3.3 - as regards allegation 2.b. only. Although the Panel did not have the detail of your former employer's practices and procedures, it is safe to proceed on the basis that they did not allow workers to speak to service users in the way which you did. You therefore did not follow their practices and procedures which were designed to keep people safe from violent and abusive behaviour at work.
 - Part 5.1 - as regards allegation 2.b. only. You abused and harmed BB by speaking to him as you did.
 - Part 5.7 - as regards allegation 2.b. only. You put yourself at risk by threatening violence to a service user who has significant mental health issues, and who retaliated by offering to have a 'square-go'.
 - Part 5.8 - as regards allegation 2.b. only. Your behaviour does call into question your suitability to work in social services.
 - Part 6.1 - as regards allegation 2.b. only. In threatening BB, you did not work in a lawful, safe and effective way.
27. The Panel did not consider that allegation 2.a. involved a breach of any part of the Codes of Practice.
28. Turning, secondly, to whether your fitness to practise is currently impaired, the Panel acknowledges that, as was stated in *R (Cohen) v General Medical Council* [2008] EWHC 581, a finding of misconduct does not automatically mean that the person's fitness to practise is impaired. *Cohen* referred to three highly pertinent factors – whether the conduct is easily remedied, whether it has been remedied and the risk of repetition.
29. In *Council for Healthcare Regulatory Excellence v NMC and Grant* [2011] EWHC 927 (Admin), the court noted that:
- “it is essential, when deciding whether fitness to practise is impaired, not to lose sight of the fundamental considerations, ... namely the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour so as to maintain public confidence in the profession” (paragraph 70).
30. The court continued by saying that:
- “In determining whether a practitioner's fitness to practise is impaired by reason of misconduct, the relevant 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, but also whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment were not made in the particular circumstances.” (paragraph 74).

31. Finally, the court approved of what was said by Dame Janet Smith in her Fifth Report in the Shipman Inquiry as being an appropriate test in considering impairment of fitness to practise (paragraph 76):

“Do our findings of fact in respect of the doctor’s misconduct, deficient professional performance, adverse health, conviction, caution or determination show that his/her fitness to practise is impaired in the sense that s/he:

- a. has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or
 - b. has in the past brought and/or is liable in the future to bring the medical profession into disrepute; and/or
 - c. has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the medical profession; and/or
 - d. has in the past acted dishonestly and/or is liable to act dishonestly in the future.”
32. Although reference is made to ‘the doctor’, similar considerations apply to social service workers.
33. It is self-evident that some conduct is more easily remedied than others. In this case, the Panel accepts that the conduct in question could be remedied. It appeared to the Panel that the incidents took place against a background of you struggling at times to deal with challenging behaviour. You had received some training on that, but it is possible that further training might have been an aid in dealing more effectively with challenging behaviour. As noted below, however, the Panel is not persuaded that such training has been undertaken by you.
34. The Panel also took into account the Decisions Guidance and aggravating and mitigating factors.
35. The Panel considers the following factors to be mitigating factors:
- Insight, regret and apology – in relation to allegation 1.b. only. There was evidence that you had immediately reported the matter to your service manager, and that you accepted that you had lost your temper and had not acted as you should have.
 - Circumstances leading up to the behaviour – in relation to both incidents there were circumstances which offered some mitigation. In the 2019 incident, you had been subjected to serious verbal abuse by BB over a period of about two hours. Initially you had tried to de-escalate the situation, but it seems that eventually you ‘snapped’.
 - The 2020 incident took place against the background of you having witnessed a very serious violent assault on another service user. You

had felt you did not receive support following it. You were also subject to abuse from the service user prior to the incident happening.

- References – the Panel had a reference from your former service manager, YY, which it was told had been sent in December 2021. It noted that you had followed good practice and procedures since the investigation into the 2020 incident. You had continued to engage in positive support with clients and as part of the team.
- Concealing wrongdoing - in relation to allegation 1.b. only. As noted above, you had reported the matter promptly to your service manager. You wrote an account of the incident (from the perspective of AA) on your employer's recording system.

36. The Panel considers the following to be aggravating factors:

- Conduct inside or outside work – the fact that both incidents occurred inside work was to some extent an aggravating factor. The conduct was not what those you were employed to support should have expected from you.
- Cooperation with the SSSC – there was no cooperation with the SSSC's investigation. In fact, in your most recent communication (in May 2023) state that there was no corroboration of the allegations and that if the matter proceeded you would "publicise it and your actions of making allegations with no evidence."
- Isolated incident or pattern of behaviour – there is a pattern of behaviour which is that when confronted with challenging situations, you have reacted by shouting at the service user or threatening them with harm.
- Consequences of the behaviour – as regards allegation 2.b. only. The consequence of your threat to BB was that BB went and got dressed for a fight. BB had tried to apologise to you, but you had refused to accept his apology. You also obstructed BB from using the service's phone. All of this made BB more upset than he already was.
- Abuse of trust - as regards allegation 2.b. only. Service users had a right to expect those working with them to put their best interests at the forefront of your interactions with them. The Panel notes that BB had serious mental health issues. You broke the trust that had been placed in you by BB and by your employer, by acting as you did.

37. The Panel considers the following factors to be neutral:

- Previous history – you had worked with the service since 2015, but there had then been two incidents in 2019 and then 2020, before

your employment ended by your resignation in mid-2022. The Panel considered that this factor was neutral in that context.

- Consequences of the behaviour - in relation to allegation 1.b. only. The Panel did not have any evidence of the impact of your actions on AA or on your colleague who witnessed the incident.
- Concealing wrongdoing - as regards allegation 2.b. only. It appears that you reported to your service manager that something had happened but what was actually reported was unclear. The Panel also heard evidence from WW who said that she had texted the service manager as the incident was happening. She had told him that you were not going to tell him all of it, and that she would tell him the whole story.

38. In reaching its decision, the Panel must also take account of the need to protect the public, and the public interest. The Panel is not persuaded that there is evidence that you have learned from these incidents, and that your practice has changed. It is concerned that there is a risk of the very serious conduct in allegation 2.b. being repeated if you have not changed your practice. The Panel therefore has concerns about public protection. Were it to find that your fitness to practise was not impaired, you would be free to work in the care sector. Prospective employers, service users and the public in general would be entitled to assume that there was no issue regarding your fitness to practise.
39. As regards the public interest, the Panel also is of the view that a member of the public, if fully informed of the facts, would expect the regulator to take action. It would expect the regulator to mark its disapproval of your conduct, specifically that in allegation 2.b., by finding that your fitness to practise is currently impaired.
40. The Panel has taken account of your ability to work in the care sector if a finding of impairment were made. The Presenter advised the Panel that there is nothing to suggest that you are working in registrable employment. You did not respond to an email requesting information about that. The Panel has no information on any specific impact on you. However, it acknowledges that a finding of impairment may have an emotional and/or reputational impact on you, as may be true for any Worker.
41. Balancing your interests against those of the public, the Panel is of the view that the interests of public protection and public confidence outweigh your interests. The Panel is not satisfied that the conduct found proved has been remedied. It is therefore not satisfied that it is unlikely to be repeated.

42. Taking into account all of the above, the Panel is satisfied that a finding that your fitness to practise is impaired is a necessary and proportionate decision.

Sanction

Presenter's submissions

43. The Presenter referred the Panel to Rule 20. and the sanctions which the Panel may impose. Rule 36.1. requires the Panel to take account of the Decisions Guidance or to give reasons for not doing so. Any sanction is not intended to be punitive. It is a balancing exercise, involving your interests in working in the profession and the potential harm to the public and the public interest.
44. The allegations are now over three years old, and you have engaged in some training. You have not shown insight during the SSSC's investigation.
45. The case of *Kimmance v General Medical Council* [2016] EWHC Admin 1808, paragraph 71 states that in a regulatory jurisdiction where insight and remediation are very important and where the conduct complained of is clearly very serious, non-attendance at the hearing can come close to professional suicide.
46. Your lack of insight causes real concern in assessing what you have learned from the incidents and the disciplinary investigation. There are ongoing public protection concerns.
47. In terms of the Decisions Guidance, the Panel must start by considering the least restrictive option. No further action is not appropriate. A warning is the appropriate sanction as it is at the lower end of seriousness. There are periods of positive practice and the risk to the public is low. The reference from YY indicates you were more cautious after receiving the final written warning. It would be disproportionate to impose anything other than a warning.

Panel's decision

48. The Panel decided to impose a warning for a period of four years.

Reasons

49. In reaching its decision, the Panel took into account the findings in fact, the decision on Impairment, the evidence previously presented, all papers in the bundle and the submissions from the Presenter. It also took into account the Rules and the Decisions Guidance. It had regard to the seriousness of the impairment to your fitness to practise, the protection of the public, the public interest in maintaining confidence in social services

and the issue of proportionality. The Panel considered the aggravating and mitigating factors. It considered each of the possible disposals in turn.

50. To impose no sanction would not be appropriate as there were no exceptional circumstances in this case to justify a decision of no further action.
51. A warning would be appropriate as it marks the seriousness of the conduct which the Panel has found proven. The Panel did have some concerns about whether a warning provided adequate protection of the public. It took some comfort from the knowledge that a warning would be recorded on the SSSC Register and published on its website. It would therefore be known about by any potential employer who would be alerted to the fact there had been an issue with your fitness to practise. The Panel also took account of the fact that from July 2022 you have apparently not been working in registrable employment. It was therefore unworkable to consider imposing conditions.
52. The Panel recognised that in considering the bullet points at section 15 of the Decisions Guidance, it was difficult to say that the circumstances of this case fitted in with those factors. However, this is a relatively unusual case. The incidents are relatively historic. The investigation by the SSSC has not been speedy. The more serious incident, in 2019, does not appear to have been subject to investigation by your former employer. Your former employer has, for various reasons, been unable to provide the Panel with much information on what learning there has been since these incidents, particularly as regards the 2019 incident.
53. In these circumstances, the Panel decided that the most appropriate way of protecting the public and addressing public interest concerns, was by the imposition of a warning. The duration of the warning marks the Panel's concern that the serious nature of the incident in 2019 has not been fully appreciated by you, and the need to protect the public.