

**Outcome of Fitness to Practise Panel impairment hearing held on
Thursday 9 and Friday 10 May and Tuesday 18 June 2019**

Name	Graham Connor
Registration number	3046840
Part of Register	Support Workers in a Care Home Service for Adults
Current or most recent town of employment	Troon
Sanction	Warning to stay on your registration for a period of three years and condition imposed
Date of effect	11 July 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 concluded on Tuesday 18 June 2019 at Compass House, 11 Riverside Drive, Dundee. At the hearing, the Panel decided to revoke the TSO and impose a warning for three years and conditions 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

The allegations against you at the hearing were as follows:

While employed as a Care Assistant by Suncourt Limited at Suncourt Nursing Home in Troon:

1. on 5 November 2018 you were convicted at Ayr Sheriff Court of charges that:
 - (a) on 4 September 2018 at X, Ayr you did assault AA, care of Police Service of Scotland and did repeatedly punch and kick him on the body and repeatedly punch him on the face to his injury and that this offence was aggravated by involving abuse of [a person known to you] in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;
 - (b) on 4 September 2018 at X, Ayr you did behave in a threatening and abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did strike a candle holder against a fireplace there contrary to Section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 and that this offence was aggravated by involving abuse of [a person known to you] in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;
 - (c) on 4 September 2018 at X, Ayr you did without reasonable excuse wilfully or recklessly destroy or damage the property belonging to another and did kick a television thereby causing the screen of the television to break contrary to the Criminal Law (Consolidation) (Scotland) Act 1995, section 52(1) and (3) and that this offence was aggravated by involving abuse of [a person known to you] in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;
2. on 13 November 2018 you were convicted at Ayr Sheriff Court of a charge that you being an accused person and having been granted bail on 5 September 2018 at Ayr Sheriff Court in terms of the Criminal Procedure (Scotland) Act 1995 and being subject to the condition inter alia that you did not approach, contact or communicate in any way with AA did on 31 October at Y, Ayr, Z, Sanquhar and elsewhere fail without reasonable excuse to comply with said condition in respect that you contacted said AA, [a person known to you], c/o the Police Service of Scotland, by social media contrary to the Criminal Procedure (Scotland) Act 1995, Section 27(1)(b) and that this offence was aggravated by involving abuse of [a person known to you] in terms of section 1 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016;

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

Decision of the Panel on Thursday 9 and Friday 10 May 2019

At the hearing, the Panel did not make a final decision about your Registration. It decided that your fitness to practise is impaired by reason of your criminal convictions but is minded to impose a warning for a period of three years and placing conditions on your Registration. The Panel cannot make an order involving conditions unless it hears from you. You are invited to make written comments on the conditions and come to the reconvened hearing. If you do not get in touch, the Panel will not be able to impose conditions.

Background

1. You are registered on the part of the Register for Support Workers in a Care Home Service for Adults. You were registered on 1 March 2015. You commenced employment with BUPA Care Homes on 15 December 2014. You are 27 years-old, born on 17 August 1991.

The Presenter's submissions on the facts

1. The Presenter referred to Rule 32(8). It says:
"The findings of fact and certification of conviction of any criminal court in the United Kingdom are conclusive proof of the facts and the conviction."
2. She took the Panel to the relevant documents. There were two certified criminal complaints. The first complaint covered the subject matter of Allegation 1. above. There was an extract conviction report relating to it. The second complaint covered the subject matter of Allegation 2. There was an extract conviction in relation to that complaint.
3. There was no suggestion that the convictions did not relate to you, or that the extracts were in any way defective. She submitted that the material produced discharged the onus of proof of the SSSC to prove the convictions.
4. The disposal on the first complaint was a £500 fine, admonition and a compensation order for £250. On the second complaint you were admonished.

Your position on the allegations

1. Nevertheless, the Presenter invited the Panel to consider, at the fact-finding stage, the material that you had put in disputing the conviction. She said it was irrelevant to the question of whether the conviction was proved, but it contained your explanations and contentions and the Panel should know about it.

2. The Presenter went carefully and comprehensively through the material. She drew the Panel's attention to the fact the you denied the events set out in Allegation 1. and continued to do so. She noted that you had pled guilty to the events set out in Allegation 2.
3. The Presenter told the Panel that your position was that, at the relevant time, you were in an abusive and controlling relationship. AA was a jealous, moody, racist. AA had previously assaulted you by strangling you. The events on 4 September 2018 were the result of the controlling relationship. Insofar as you did anything, it was in self-defence. You had been put in fear of your life. You had not vandalised the television. AA had picked it up to hit you with it. [Information redacted].
4. You had wanted to appeal against the conviction but could not do so.

The Panel's Decision on Findings in Fact

1. The Chair advised that Rule 32(8) meant that the findings of fact and certificates that had been produced were conclusive. The things that you had brought up might be relevant to the question of impairment and sanction but were not relevant to the findings in fact. The Sheriff had heard the evidence, including your defence, and made the findings that he did. The Panel was not allowed to retry the case.
2. The Panel found proved Allegations 1. and 2.

Impairment

1. The Presenter submitted that your conviction meant that you had failed to comply with parts 5.7 and 5.8 of the Code and your conviction meant that your fitness to practise as a social service worker is impaired.
2. The law was that the Panel had to consider the impairment as at today's date. In decision making, the Panel had to look forward and not back but, to form a view as to current fitness, the way the person has acted in the past was a material consideration.
3. The Panel should consider whether the conduct was remediable, remedied, or likely to be repeated. The Presenter referred to the case of *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council* [2011] EWHC 927 (Admin). The Panel ought to consider public protection, the public interest and public protection.
4. The Panel ought to have reference to the Decisions Guidance. The Presenter referred to parts 6, 7, 8 and 9.
5. The Presenter said that the convictions spoke for themselves. She submitted that your behaviour was fundamentally incompatible with

Registration. You had been guilty of violence and abuse. It was an example of serious criminality. Your values and attitudes were not those of someone who should be working in the social care sector. You had injured [a person known to you]. You had put AA at risk of physical and emotional harm. The circumstances, with three charges, and repeated striking, demonstrated a pattern of behaviour.

6. She accepted that the second conviction, the breach of bail by contacting [a person known to you] by social media, was less serious but was still a deliberate failure to comply with a court order.
7. She submitted that there was a serious risk of repetition of the behaviour. You denied the offences and went to trial. You continued to deny the offences and blamed the victim and the relationship. You had learned nothing from the experience. Your actions were not those of someone who has been reflective and thoughtful. Your suitability to work in the social services sector was in question. She referred to the case of *Kimmance v General Medical Council* [2016] EWHC 1808 (Admin), where the judge said that, in a regulatory jurisdiction, where insight and remediation were important factors, non-attendance could come close to professional suicide. You could have come and explained your position.
8. She said that the conviction called into question your temper and suitability for care sector work. It was challenging work. There might be physical confrontation. She said that you had abused trust and power in your personal relationship. She said that there was a high risk of repetition in a domestic setting. She accepted that the risk was low in a work setting but the lack of remediation and risk would suggest current impairment.
9. Impairment could be found for public protection reasons. It could also be found in the public interest. The public would expect social service workers, with responsibility for vulnerable adults, to be people with the attributes of care and compassion. The conduct was not consistent with that expectation.
10. The Presenter made submissions about your work history. You had worked in a care setting since December 2014 with two other employers at three care homes. You had not come to the attention of the SSSC. You had worked with your last employer since September 2018. You were entitled to a presumption of good character.
11. [Information redacted].
12. She said that although the conduct was outside work, it had the potential to affect the reputation of the profession. She submitted that there had been no duress. If you had been advanced a plea of self-defence at the trial it was rejected by the Sheriff.

13. The Presenter pointed out that you had a good reference from your last employer. You had worked with that employer until February 2019. At around that time you have become subject to a Temporary Suspension Order (TSO) that stopped you working in the sector.
14. You had co-operated with SSSC and your employer by telling them about the charges and convictions. You and your mother had written in to SSSC with comments. You had nevertheless decided not to attend the hearings. The failure to attend the hearings was an aggravating factor.

The Panel's Decision on Impairment

The Panel had to consider your present fitness to practise. The conviction was in the past, but past behaviour could show present impairment. The Panel has structured its decision by, first-of-all, looking at the matters in the Decisions Guidance. The decision then turns to consider all the relevant circumstances.

Seriousness

1. You were found guilty of a crime of violence. There was one incident. The subject matter of the second complaint was intimately connected with it. Otherwise there was no suggestion that, before or after these events, you had been of bad character or involved in any kind violence in or out of work. You were, however, convicted by the Sheriff and the Panel is obliged to take the facts as found and recorded in the complaint and conviction. It has also drawn reasonable inferences from them.

Insight, regret, and apology

1. You have continued to insist that you acted in self-defence. You have not put forward any compelling evidence of insight, regret, and apology. Nor were you present at the hearing to demonstrate to the Panel that you have insight.

Previous History

1. You have worked in care since 2014 and there is no material to suggest that you have ever been violent in or out of the workplace.

Circumstances leading up to behaviour

1. The Panel did not feel that it was able to decide why the event in the flat took place. The facts stated in the complaints and conviction did not allow it to infer that there was any previous abuse or violence. The events in relation to which you were convicted did not demonstrate a pattern of behaviour. There was but a single event. Your position is you had been abused by the victim of the assault. It could not make any finding about

that based on the evidence that was before it. There is no evidence that the violence was pre-meditated. It cannot draw an inference of pre-meditation from the facts stated in the complaints and conviction.

2. [Information redacted].
3. In relation to the breach of bail conditions. This was a one-off and intimately connected with the event on 4 September 2018.

Length of time since the behaviour and recent practice

1. The behaviour was in September 2018. You returned to work after the event. You worked until February 2019. At around that time, a TSO was made by SSSC and you were unable to continue to work.

Conduct inside or outside of work

1. The conduct was outside work. The Panel thought carefully about whether, and to what extent, it reflects on your suitability to work in the social care sector. The circumstances are not the kind of thing that it thinks would be likely to present in the workplace. It was submitted that the event demonstrated that you are short-tempered. The Panel were not convinced that it could draw that inference from the material. It will come back to this issue when considering whether you are impaired.

Duress

1. For the reasons we have already given, we cannot find that you were under duress at the time of the event.

References or testimonials

1. You referred in various places in the papers to your good work record. There was one reference. It was from your most recent employer. The Panel noted that the employer kept you on despite the conviction. The employer stated that you appeared to have a good relationship with residents and other staff. You appeared to perform tasks to a high standard. There was no indication that you were short-tempered or acted inappropriately towards staff or residents.

Co-operation with SSSC

1. You notified the SSSC and your employer about the charges and convictions. You and your mother kept in touch with SSSC. You engaged until 28 April 2019. You decided that you did not want to attend the hearings. From the correspondence, the Panel infer that you were becoming concerned that the process was not going to be fair and that you

were going to be tried again for the offences of which you were convicted. You wrote to the SSSC on 28 April 2019 to say that you were no longer working in the care sector and were not going attend the hearing.

Consequences of the behaviour

1. As a result of your behaviour. You were convicted and fined. You lost a job which you loved. You were made the subject of a TSO by the SSSC.
2. The Panel does not know much about what happened to the victim of the assault. The complaint tells it that he was struck repeatedly and injured.

Abuse of trust

1. The evidence before the Panel was of a one-off incident. It was not satisfied, in all the circumstances, that the event could be characterised as being an abuse of trust.

Concealing wrongdoing

1. There has been no concealment. You approached your employer and SSSC to inform them of the charges and convictions.

Impairment

1. A Worker is fit to practise if he meets the standards of character and conduct necessary for him to do his job safely and effectively.
2. The Presenter submitted that your behaviour contravened parts 5.7 and 5.8 of the Code. These say that, as a social service worker, you must uphold public trust and confidence in social services and not put yourself or other people at unnecessary risk; and must not, in or outside work, act in a way which would bring your suitability to work in social services into question.
3. The behaviour did, in the view of the Panel, contravene those provisions. A conviction for a crime of violence might cause people to question your suitability to work in social services.
4. The Panel had to consider whether the behaviour meant that your fitness to practise was impaired at the date of the hearing. A decision on current impairment is to be reached on a consideration of all the circumstances.

An important matter was the risk of repetition of violent behaviour. There was no evidence that the event was anything other than a one-off as a result of a specific set of circumstances. But because you have not demonstrated insight, regret, and apology the Panel cannot say that, if the same or similar circumstances presented themselves again, you would not act in the same way. It does not think that the risk of repetition

necessarily carries over from the domestic setting into the social services workplace. The violent behaviour of which you were convicted was outside the workplace in a specific domestic setting. There is no evidence of you being short-tempered or violent at work. On the contrary, the testimonial from your most recent manager is entirely positive. As the Panel has said, you have worked for over four years in the sector without any incidents that have come to the attention of the SSSC.

5. Having given careful consideration to the specific circumstances, the Panel is not satisfied that it is necessary to find impairment for the protection of the public. The Panel assess that the risk of repetition in the work setting is low. However, the public interest demands that it makes a finding of current impairment of fitness to practise. It is important to make a finding of impairment to ensure public confidence in the SSSC as a regulator. The behaviour, although not in a work setting, falls well short of the standards that should be met by a member of a workforce bound by the Code. It must be marked by a finding of impairment.

The Presenter's Submissions on Sanction

1. The Presenter sought your removal from the Register. She said that your behaviour had been of a kind where, in the public interest, and to protect the reputation of SSSC as a regulator, removal was the only option. It would be proportionate. Your lack of insight was an important factor.
2. She reminded the Panel that disposal was not intended to be punitive. The purpose of sanctions was to protect the public, satisfy the public interest in having a suitable workforce, and to protect the reputation of social service workers and their regulator.
3. The conviction was so serious that it was fundamentally incompatible with you being a social service worker. She referred to sections 9 and 10.6 of the Decisions Guidance.
4. Removal was needed to protect the collective reputation of social service workers. She referred to *Bolton v Law Society* [1994] WLR 512 and *Fatnani v General Medical Council* 2007 EWCA Civ 46; *Wentzel v General Medical Council* [2004] EWHC 381 (Admin). The conviction for violence with a statutory aggravation of domestic abuse would lead to members of the public to be concerned about you being registered. They might feel that you could not be trusted. This would be even more so where you had failed to show insight and had, effectively, abandoned being a care worker in terms of your email on 28 April 2019.
5. The Presenter submitted that, if the Panel did not think you had to be removed, a warning was the least sanction that should be imposed. A warning could stay on the Register for up to five years. She submitted that

three years would be appropriate in this case.

6. The Presenter submitted that there were no workable, enforceable conditions that could be imposed. Because you did not have insight you would not be likely to engage with conditions.
7. She submitted that a warning and conditions was not appropriate because there were no appropriate conditions that could be imposed. There was no rationale for suspension. Suspension and conditions would not be appropriate.
8. The Presenter finished by submitting that there had been a serious, deliberate act of violence, an abuse of trust, a persistent lack of insight and no evidence of remediation. That being so, the appropriate sanction was removal.

The Panel's Decision on Sanction

1. The Panel considered the sanctions in accordance with the Decisions Guidance. It rejected the option of making no order. This was not an exceptional case where that would be appropriate. The behaviour was too serious for no order to be made and had to be marked by a more restrictive sanction.
2. The Panel gave careful consideration to the option of issuing a warning. The breaches of the Code had to be marked on the public record. It had to be made clear to you that such behaviour, violence, inside or outside work, was entirely unacceptable. The problem with issuing a warning alone is that the Panel was not satisfied that you understood why a conviction of this kind was something that should concern the SSSC and the public. The letters you sent in did not demonstrate that you understood. You were not at the hearing to explain yourself. This meant that, although the Panel had assessed you as a low risk to clients in the workplace, it had to do more than issue you with a warning.
3. The Panel has decided that conditions alone would not be appropriate. A warning was needed to mark, in the public interest, the fact that you had deviated substantially from the Code. The incident was not trifling. It was serious enough to result in conviction and a fine.
4. The Panel decided that the appropriate disposal would be a warning and conditions. The warning would serve the public interest by marking the unacceptability of your behaviour. It would remind you to stay out of situations that might result in confrontation. The Panel thinks that conditions are needed in order to make you reflect on what happened and why it was behaviour that, although outside work, affects social services workers as a whole and the SSSC. A warning, to remain on your record for

three years was considered appropriate.

5. A warning and conditions would be appropriate because the Panel does not think you pose a significant risk to service users. The reference that it received said that you were a good Worker. You have been working in the sector for four years. You would have continued to work in the sector had you not been subject to a TSO. Your employer had kept you on despite your convictions.
6. The Panel cannot impose a warning and conditions unless you agree to the conditions. It proposes a condition that you prepare, in writing, a reflective account, to the satisfaction of the SSSC, dealing with the following:
 - What you would do if you were faced with similar circumstances to those that arose on 4 September 2018 which are the subject of allegation 1.?
 - What would you do if you were faced with similar circumstances to those which arose on 31 October 2018 which are the subject of allegation 2.?
 - How do you think these convictions by a care worker registered by the SSSC would be viewed by a member of the public?
 - How would service users feel if they found out that someone caring for them had such a domestic abuse conviction?
 - How would service users' relatives feel if they found out that someone caring for their relative had such a domestic abuse conviction?
 - Why do you think the SSSC, as regulator of care workers, is concerned about your convictions?

You must write in to the SSSC, within 14 days of service of this Notice saying whether you accept the conditions or propose any different conditions. Service is deemed to be effective as of **14 May 2019** and any representations that you wish to make require to be received by the Clerk on or before **28 May 2019**. The Panel shall re-convene to consider the matter on a date to be confirmed. You will be invited to the reconvened hearing. At the hearing the Panel will decide whether to impose the warning and conditions (either those conditions suggested above or suitable alternative conditions) or, if you do not accept the conditions or other suitable conditions, to reconsider what sanction to impose. Meantime, the TSO would continue in force.

Panel's Final Decision

When it last met, on Thursday 9 and Friday 10 May 2019, the Panel proposed a condition that you prepare, in writing, a reflective account, to the satisfaction of

the SSSC, dealing with the following.

1. What you would do if you were faced with similar circumstances to those that arose on 4 September 2018, which are the subject of allegation 1.?
2. What would you do if you were faced with similar circumstances to those which arose on 31 October 2018, which are the subject of allegation 2.?
3. How do you think these convictions by a care worker registered by the SSSC would be viewed by a member of the public?
4. How would service users feel if they found out that someone caring for them had such a domestic abuse conviction?
5. How would service users' relatives feel if they found out that someone caring for their relative had such a domestic abuse conviction?
6. Why do you think the SSSC, as regulator of care workers, is concerned about your convictions?

The Panel began by asking the Presenter to make submissions on whether the proceedings should go ahead in your absence. You had been in touch and knew the hearing was going to take place. You did not request an adjournment. The Panel decided to proceed in your absence.

The Panel notes that you wrote in to the SSSC to say that you accept the warning and conditions. The Panel has noted that you still say that you were acting in self-defence. By law, the Panel must accept what the sheriff decided. The court proceedings have obviously been traumatic for you. You have been punished by the court. The SSSC's job is not to impose further punishment. In this kind of case its obligations are to make a decision that takes into account:

1. the seriousness of the impairment to your fitness to practise;
2. the protection of the public; and
3. the public interest in maintaining confidence in social services.

The Panel notes that you say that you loved your job working with and assisting the elderly. You miss your job in the care environment. You are getting your life back together and [information redacted]. You say that you have learned from your experience. You assure the Panel that you are not short tempered or violent in the care environment. You say that you will not get yourself into the same situation as that you faced in September 2018.

You say that you want to be able to return to social services work. You worked in social services until you were subject to a TSO. You had a good reference. There is no suggestion that you were anything other than a competent and caring worker.

Despite the Presenter's further submissions, which were to the effect that, in the circumstance, only removal would be appropriate, the Panel continued to be of the view that the proportionate disposal of your case is the imposition of a

warning and conditions.

It is now for you, with the assistance of the training and development department of SSSC, to complete a satisfactory reflective account. We see that you have done some work on it already. We consider that your reflective account would be more effective if it shows that you have accepted the sheriff's decision and are moving on. The reflective account should be your work and not that of your mother, although she may be able to help you.

If you do what is asked of you, it is likely that you will be able to return to work in the care sector.

You must complete the reflective account within 12 weeks. You may ask for a review of the condition under Rule 25. The reflective account must deal with the following:

1. What you would do if you were faced with similar circumstances to those that arose on 4 September 2018, which are the subject of allegation 1.?
2. What would you do if you were faced with similar circumstances to those which arose on 31 October 2018, which are the subject of allegation 2.?
3. How do you think these convictions by a care worker registered by the SSSC would be viewed by a member of the public?
4. How would service users feel if they found out that someone caring for them had such a domestic abuse conviction?
5. How would service users' relatives feel if they found out that someone caring for their relative had such a domestic abuse conviction?
6. Why do you think the SSSC, as regulator of care workers, is concerned about your convictions?

A warning will be placed on your Registration. The maximum period is five years. To mark the seriousness of the offence of which you were convicted, the Panel consider that the warning in your case should remain on your record for three years.

The TSO on your Registration has been revoked.