

**Outcome of Fitness to Practise Panel impairment hearing held on  
Monday 1, Tuesday 2, Wednesday 3 and Thursday 4 July 2019**

<b>Name</b>	Scott Leadbetter
<b>Registration number</b>	3038486
<b>Part of Register</b>	Support Workers in a Care Home Service for Adults
<b>Current or most recent town of employment</b>	Falkirk
<b>Sanction</b>	Removal
<b>Date of effect</b>	27 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 met on Monday 1, Tuesday 2, Wednesday 3 and Thursday 4 July 2019 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

At the hearing, the Panel decided that all of the allegations, as amended, 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 November 2016 (the Decisions Guidance).

### **Allegations that your fitness to practise is impaired**

The allegations against you are that on or around 13 May 2017, while employed as a Care Assistant by Kinnaird Manor Care Home, at Kinnaird Manor Care Home, in Falkirk, and during the course of that employment you did, in relation to AA, age 81:

1. when AA tried to kick you, shout in AA's face "I'm not a little girl you can hit", "I'm big and strong," or words to that effect
2. forcefully remove AA from the lounge by throwing him out the door
3. when AA was lying on the floor:
  - a. straddle AA with your legs
  - b. shout "you are psychotic", or words to that effect
  - c. hold onto AA's wrists and hold AA's hands above his head

and in light of the above your fitness to practise is impaired because of your misconduct.

### **Preliminary matters**

Before making its findings in fact, the Panel decided to amend the allegations to read:

On or around 13 May 2017, while employed as a Care Assistant by Kinnaird Manor Care Home, at Kinnaird Manor Care Home, in Falkirk, and during the course of that employment you did, in relation to AA, age 81:

1. shout in AA's face "I'm not a little girl you can hit", "I'm big and strong," or words to that effect
2. forcefully remove AA from the lounge by physically pushing him out the door
3. when AA was lying on the floor:
  - a. straddle AA with your legs
  - b. shout "you are psychotic", or words to that effect
  - c. hold onto AA's wrists and hold AA's hands above his head

and in light of the above your fitness to practise is impaired because of your misconduct.

## **Findings of Fact**

The Panel made the following findings of fact.

On or around 13 May 2017, while employed as a Care Assistant by Kinnaird Manor Care Home, at Kinnaird Manor Care Home, in Falkirk, and during the course of that employment you did, in relation to AA, age 81:

1. shout in AA's face "I'm not a little girl you can hit", "I'm big and strong," or words to that effect
2. forcefully remove AA from the lounge by physically pushing him out the door
3. when AA was lying on the floor:
  - a. straddle AA with your legs
  - b. shout "you are psychotic", or words to that effect
  - c. hold onto AA's wrists and hold AA's hands above his head

## **Reasons for the Panel's Decision**

### Evidence on behalf of the SSSC

The Presenter led evidence from three witnesses.

### ZZ

The Presenter led evidence from ZZ. ZZ explained that at the time she was the deputy manager Kinnaird Manor Care Home. She had worked at the home for six years. Her duties were mainly nursing but she assisted the manager in the general running of the unit

She spoke to page 28 of the bundle as being notes from a meeting she had with her manager after the incident. She acknowledged that ZZ in the notes referred to her and accepted it was a true account of the meeting which had been called to consider safeguarding issues following an incident when you were seen on top of a resident apparently restraining him.

She testified to being in the duty office giving the nightshift report to YY as part of the handover procedure when she heard a thump. She was concerned that it may have been someone falling. YY and ZZ then went down the corridor to see what was happening. YY was in front, she explained he was out of the office first as it was very small and she had been sitting at the desk whereas he was standing. She said he really had to leave before she could get out. She described the corridor as being wide enough for two wheelchairs to sit side by side. She explained that the duty office was not far along the corridor from where the incident occurred.

ZZ recalled looking down the corridor and she saw AA lying on his back on the floor and his legs were outstretched. His head was towards her, you were kneeling over him. She could see one of your knees on the floor but she could not recall seeing where the other one was. She stated that it looked as if you were holding AA's wrists and it seemed to her that you did so for slightly longer than you should have. She said that she couldn't actually see AA's face then. She testified that you seemed to be stopping AA from moving his wrists but she didn't think you were stopping him from moving otherwise. She told the Panel that AA was perhaps mumbling but wasn't saying anything coherent. She explained that he wasn't always able to get his point across verbally due to his dementia. She described the sound as "a gritted teeth anger noise."

By the time she had approached the AA, you had got up and were coming towards her. She said that you came towards her and said that AA could be "quite dangerous".

ZZ was clear the she did not see how AA got onto the ground. She explained that there could be circumstances where it was acceptable to assist someone to fall to the ground in a controlled manner. However, she was of the view that it was not appropriate to grasp a resident and in particular to hold that grasp once they were on the floor

She spoke to pages 92-94 of the bundle as being the signed statement she gave to the SSSC case holder. In particular, she confirmed that paragraphs 6, 8,10, 13 and 14 were an accurate account of what had happened.

ZZ told the Panel that the sound she had heard was like someone falling. She testified that she did not hear anything to suggest a struggle or anything else. She described it a simply being like "a thud". She did state however that she does not have "great hearing"

ZZ further testified that, after the incident, YY and XX helped AA stand and took him to his bedroom. She said that you had left the unit and she was not quite sure where you went. She described you as looking a bit flustered. She went to check on AA who told her he thought you were going to put him to bed. However, AA was not able to tell her why he thought that and he appeared to calm down quite quickly once he was in his room. She told the Panel that she had checked AA's wrists and face for marks and there were none. Given he was still dressed, she asked the nightshift to check for any other marks as she did not wish to distress AA any further. She confirmed he seemed to settle down quickly and that the nightshift did not find any marks on him.

ZZ described you as being at least six foot with an average build. She stated that at times your manner could be intimidating and she had seen you angry with colleagues before. However, she had not witnessed you being angry with residents.

She described AA as a lot smaller than you and of average weight. She did consider your conduct to be out of character and she told the Panel that you were liked by residents.

ZZ stated that she knew you weren't back on shift until the following Monday so she had asked the nurse on that shift to ask you to write a statement. That statement was passed to her manager who decided there was a safeguarding issue and you were suspended.

Overall, the Panel found ZZ to be credible and they felt that she answered the questions put to her in a straightforward manner. However, there were some inconsistencies between her evidence and that of the other witnesses and in those instances the Panel preferred the evidence of YY and XX. They considered her evidence was largely reliable, particularly where corroborated.

#### YY

The Panel heard evidence from YY. YY told the Panel that he has worked as a social care worker for about twenty years and as a senior care worker for about ten years.

He spoke to the signed statement at page 30 of the bundle which he had given to his employers during their investigation and the signed statement at pages 83 to 85 which he had given to the SSSC. He confirmed both statements were true and accurate accounts.

He testified that, on the night of the incident, he was in the duty room which is situated in Mariner Unit with WW and ZZ. He explained that he usually worked in Callander Unit and was there for the handover to nightshift.

He recalled hearing XX shouting "YY" several times and it had sounded urgent. He explained that the duty room was very close to the lounge and dining area. The Callander and Mariner Units were on the same corridor which was separated by doors with keypads. He said it only took a matter of seconds to get from the duty room site of the incident

He recalled that when he heard XX call him, he left the duty room first and ZZ was just behind him. He said he saw AA lying on the floor on his back and you were over the top of him. He accepted that you could be described as straddling AA.

He explained that he was slightly to the left of you and he couldn't see either of your faces. You were facing away from him and he could see AA's legs pointing up towards him. You had your back to him and were leaning over AA, holding his wrists.

He recalled that either he or ZZ (he couldn't remember who) had told you to get off AA and you did so. When he saw AA he thought he looked distressed and described his facial expressions as scared.

He further testified that AA's hands were on the floor with his palms facing up and you were holding his wrists. He said it was difficult to say the amount of force you were using but AA was definitely being pressed down and his hands were above his head.

He described you as looking as if you had made a mistake and confirmed that as he had approached you had got up. He thought, however, that may have been because he had approached you.

YY explained that after you stood up, AA was helped from the ground although he couldn't recall who did that. He said you were just standing in the corridor and he couldn't remember whether you had said anything. After the incident he went back to handing over to the nightshift.

He described you as being in shock and told the Panel that he was a bit in shock himself. He recalled some discussion in the staff room of you undergoing anger management training and being prone to become angry quite quickly but he said he did not really work with you and had no direct knowledge of whether it was correct. He had not seen you act like that with a resident before and did not know what had made you do so.

He told the Panel he had had no contact with you since the criminal proceedings.

YY also described you as being about 6 foot tall with broad shoulders and he said you were quite heavy. He stated that AA is quite small – he thought about 5'7 and quite slim. As far as he was aware AA was not injured in the incident. At the time, he stated, some of the other residents were in bed and some were in the lounge area. He thought it was possible that those in the lounge area could hear what was going on but he was not aware whether or not they did.

The Panel found YY to be a credible and reliable witness. They considered that he gave his evidence in straightforward and forthright manner.

XX.

The Presenter led evidence from XX.

XX explained that she has been a care assistant at Kinnauld Manor for about two and a half years. She had previously worked in another home for about four years. She had taken a two-year break. Her main duties are caring for residents.

She spoke to the statement at page 26 and confirmed it was a truthful statement she gave two days after the incident.

She testified that she had walked into the room and had heard you say words to the effect of "I am not a little girl you can hit - I am big and strong" to AA who was sitting on a dining chair. You had your hands on the arms of the chair and AA didn't say anything although he was moving his face away from yours. Your face was close to AA's and she thought AA was uncomfortable at you invading his space. She told the Panel that she felt confused, shocked and that she froze. She recalled asking you to leave the room several times and said she would try and calm the situation down but you didn't leave. You were angry and agitated in general.

AA then started to kick and she had intervened to try and stop him doing so. She said she put her hands over AA's legs to stop either party getting hurt. She tried to get AA out of the dining room chair and into the lounge area to a comfortable chair in front of the television in an attempt to diffuse the situation. At that time, she recalled you were pacing around.

She told the Panel that she didn't really know exactly what happened next. She heard AA mumbling something but she wasn't sure what he was saying. You then came towards AA and pushed him out of the open double doors by the collar of his shirt and the belt loop of his trousers. She testified that he had stumbled out "like a drunk being thrown out of a pub". She described it as quite forceful and as happening "in the blink of an eye". She didn't know what prompted you to do that but she thought it may have been in response to AA's mumbled comments.

She confirmed that AA hadn't seemed to fall at that point but he seemed to regain his balance.

She had then turned around to support another resident who was trying to stand up so that had diverted her attention.

She then testified that she heard a loud thud, she thought it sounded like someone falling. She went out to the corridor as she thought that was where the noise had come from. She saw you straddling AA who was lying on the floor. She saw that your knees were on the floor but she couldn't see if you were putting pressure on his legs. She recalled AA's head was pointed up to the duty office. She said she couldn't see AA's face and that she only had a side view. She could see his legs and his feet behind where you were sitting. She couldn't really remember if AA was distressed. She recalled you shouting the "f" word at AA and calling him psychotic when you were on top of him.

AA's hands were above his head and you had your hands round his wrists, restraining him. She recalled shouting on YY as she knew he was in the duty room at the top of the corridor. She told the Panel she was absolutely horrified and described the experience as horrible. She shouted urgently for YY to come and help as she did not want to try and get you off AA herself. She told the Panel she had some concerns for her own safety.



She recalled YY told you to get off AA. She said you then continued to pace up and down, she was clear that you were still angry. She said that your actions were not consistent with any of the training that you had received.

She was not aware of any previous aggressive behaviour from AA other than a very minor incident involving herself.

She said it was the first time she had seen you handle a resident in that way and she thought it was out of character for you. She was not aware of any reason that would make you behave like that.

XX stated that YY and ZZ came out the office and VV came up the stairs at that point. She was facing the other way so she did not see exactly when you got up, she and VV helped AA to his bedroom. She described AA as quite scared and said he was quite red in the face. She recalled AA saying to her "He just flipped" and she thought he was referring to you. She was not aware of AA sustaining any injuries but he needed to be calmed down.

At the time, she recalled you being at the side of the corridor but after that she was not sure where you went.

On the following Monday she was put on shift with you but you didn't mention the incident. She said you just seemed your usual self. She recalled you made a statement first and then she was asked for one. You then went away and as far as she was aware you didn't return to work. She recalled giving a police statement and she next saw you at the Sheriff Court. She has not seen you since the criminal proceedings.

She testified that this was the only occasion she had witnessed a worker behaving like that. She described you as tall and quite broad and said you could come over as a bit intimidating at times. She described AA as about 5 foot 1" and of average build. She felt it would have been easy for you to restrain AA. She said she didn't work with you often so she didn't really know you. She was aware of one resident being a bit scared of you. She had heard things about you having anger issues but she didn't know if they were true or not and had no first-hand knowledge of that. She would have had concerns if you were to work in the care sector again given what had happened.

The Panel considered XX to be an impressive witness and they found her to be highly persuasive, despite being obviously nervous and finding the situation distressing. They considered her to be both credible and reliable and they accepted her evidence.



### Presenters submissions on findings of fact

The Presenter reminded the Panel that in terms of Rule 32.11, the burden of proof lies with the SSSC and in terms of Rule 32.12, the standard of evidence is on the balance of probabilities.

She reminded the Panel that they had heard oral evidence and that they had also been referred to employers meeting notes and SSSC witness statements.

She submitted that ZZ had given her evidence in a straightforward manner. She had been prepared to state when she could not remember something. She was of the view that ZZ had no reason for her to have embellished or exaggerated her account. ZZ had attended the hearing voluntarily. She invited the Panel to find her credible and to note that she had accepted her statement.

The Presenter also argued that YY had given his evidence truthfully and that it was largely consistent with his previous statements. She submitted that although YY went off at a tangent at times, he was still credible. Again, he had attended the hearing voluntarily and there was no reason for him to have embellished his evidence.

The Presenter submitted that XX was the key witness of the allegations. She was of the view that XX's evidence was consistent with her previous statements, despite her being nervous. She had witnessed all the events involved in the allegations. The Presenter considered that XX had given her evidence in a straightforward manner and demonstrated insight when required. She had also attended the hearing voluntarily and the Presenter invited the Panel to accept her evidence.

The Presenter took the Panel through the bundle. She particularly drew the Panel's attention to Page 1 (the Initial Notice of Referral), Page 8 (the employer's referral form), Page 22 (the employers meeting notes and your statement), page 26 (XX's statement to her employer), Page 28 (ZZ's statement to her employer), page 30 ( YY's statement to his employer ), page 83 (YY's statement to the SSSC ), Page 86 (XX's statement to the SSSC ) and page 93 (ZZ's statement to the SSSC).

She invited the Panel to find the witnesses all to be reliable and credible.

### Evidence on your behalf.

You were neither present nor represented at the hearing. However, the Panel did have the benefit of your statements during the meeting on 15 May 2017 which were included at pages 22-25 of the bundle and the statement you prepared for your employer which was at pages 44 and 45 of the bundle.

### The Panel's analysis of the evidence

The Panel found that there was before them sufficient evidence to prove, on the balance of probabilities, the allegations as amended.

In relation to allegation 1., as amended, the Panel found the evidence of XX to be persuasive. They noted her testimony that she had come into the dining area to find you leaning over AA's chair and shouting in his face words to the effect of "I am not a little girl you can hit, I am big and strong". The Panel also considered your version of events in your statement at page 54 of the bundle. However, they preferred the evidence of XX on that point

In relation to allegation 2. as amended, the Panel considered that, on the balance of probabilities, this had been proved. Again, they had regard to the oral evidence of XX and your statement at page 54. They noted that your version of events differed from that of XX in as much as you stated you were attempting to assist AA with a controlled fall. However, the Panel preferred XX oral account and accordingly found the allegation proved,

In relation to Allegation 3.a., the Panel noted that ZZ had testified that she saw one of your knees on the floor but she could not be sure where the other one was. Both XX and YY testified that you were straddling AA. At page 55 of the bundle you appeared to accept that you were on the floor with AA but you denied kneeling on his chest. It appears to the Panel that there was compelling evidence from YY and XX that you were straddling AA and ZZ's evidence did not contradict that. As such, they found allegation 3.a. to be found proved on the balance of probabilities.

Turning to Allegation 3.b., you appear to have admitted at page 55 of the bundle that you used the word psychotic to AA and, although you haven't specifically admitted shouting, you have acknowledged that you raised your voice. XX was clear in her evidence that you shouted at AA that he was psychotic. The Panel accepted XX's evidence in that regard and found allegation 3.b. to be proved on the balance of probabilities.

Finally, in relation to Allegation 3.c., all of the witnesses who gave oral evidence spoke to this allegation. There were some inconsistencies in oral evidence of the witnesses on this point as to AA's position in the corridor. However, all three witnesses spoke to you holding AAs wrists and holding his hands above his head. At page 23 on the bundle, you appear to have acknowledged having held AAs wrists and at page 44 you accepted that you had held onto AAs hands until ZZ arrived on the scene. The Panel found Allegation 3.c. to be proved on the balance of probabilities.

## **Impairment**

In view of its findings in fact, the Panel then moved on to consider whether your fitness to practise is impaired and, if so, on what grounds. There was no further evidence put before the Panel at this stage.

### Presenter's submission on impairment

The Presenter submitted that the Panel must now consider whether your fitness to practise is impaired. She drew the Panel's attention to Ronald Cohen v General Medical Council [2008] EWHC 58 and, in particular, the three stage test Para 65. She reminded the Panel that not every finding in relation to behaviour will result in a finding of impairment

She referred the Panel to Rule 2.2 and argued that your fitness to practise may be impaired on one of the grounds specified in that Rule. She argued that there is no strict definition of impairment but it is a matter for the Panel to decide. She submitted that the Panel should first consider grounds of impairment and then consider which, if any, applies in your case.

She further referred the Panel to Rules 2.1 and 2.2. She submitted that in your case the relevant ground is misconduct. There is no definition of misconduct in the Rules. However she referred the Panel to Roylance v General Medical Council (No 2) [2000] 1 A.C. and Campbell v The General Medical Council [2005] EWCA Civ 250 for guidance on what constitutes misconduct and, in particular, the guidance from Lord Clyde at paragraph 38 which states that misconduct is a word of general effect which falls short of what is expected. She submitted that the conduct which is expected of social service workers is that set out in the Code

She was of the view that your conduct was in breach of 1.1, 1.2, 2.2, 2.4, 3.10 5.1, 5.7, 5.8 and 6.1 of the Code.

The Presenter further submitted that fitness to practise is not defined in the legislation or the Rules. She referred them to Ronald Cohen v General Medical Council [2008] EWHC 58 and, in particular, the three stage test at paragraphs 63 to 65. It was, she suggested, clear that the Panel must now undertake a discrete exercise from finding of misconduct. They should ask themselves whether the conduct is remediable, has it been remediated, and is it likely to be repeated.

She further directed the Panel to the case of Council for Healthcare Regulatory Excellence v Paula Grant [2011] EWHC 92, at paragraph 69. They should, she argued, consider impairment at the time of the hearing looking forward. Other relevant factors could be found at paragraphs 70 and 106. Essentially, the Panel should not lose sight of the need to protect the public and maintain standards of and confidence in the social services profession

The Presenter then referred to *Igwilo v GMC* [2017] EWHC 419 (Admin). This case, she argued, states that there are a number of factors should be considered by the Panel but public protection and confidence in the profession are paramount.

She then turned to Rule 36 and reminded the Panel that they should have regard to the Decisions Guidance at Parts 6, 7 and 8. If they chose to depart from the guidance they must explain their reasons for doing so.

She then referred to aggravating and mitigating factors set out at section 7 of the Decisions Guidance. She addressed such of these factors she considered to be relevant.

Seriousness of the allegations. The Presenter submitted they are very serious. She accepted there had not been a repetition of your conduct but she pointed out that you had not worked in social services since you were dismissed from your employment. She submitted that the Panel must consider whether your conduct is likely to be repeated in the future. She argued that you had shown insufficient insight for the Panel to be reassured on this point. Further, she was of the view that your conduct is fundamentally incompatible with that required of a social service worker.

The Presenter further submitted that you could not be relied on to work safely and effectively in the sector and there would be a risk to the public were you to return to the sector. Further, she considered that a reasonable person would lose confidence in the profession and the SSSC as the regulator.

Insight. She considered your lack of meaningful insight to be an aggravating factor.

Previous history. She accepted you had no previous history with the SSSC.

Length of time. She acknowledged that it was some time since you were working in the sector and suggested that there was nothing before the Panel to demonstrate practise since the incident.

Inside or outside work. The events occurred in the course of your employment and she considered that to be an aggravating factor.

Co-operation with the SSSC. She considered you had not engaged appropriately with the SSSC and you had neither attended the hearing nor provided a statement. She considered that to be an aggravating factor

Isolated incident. The Presenter accepted that the conduct only occurred on one shift and she was unaware if it has happened before.

Harm. She was unaware of harm arising from your actions

Abuse of trust. She argued that you had failed to comply with the trust placed in you to follow your care plan and act appropriately.

The Presenter submitted that the Panel was entitled to find your fitness to practise impaired by reasons of misconduct.

### **Decision**

The Panel firstly considered whether your conduct was in breach of the Code and they were satisfied that it was in breach of parts 1.1, 1.4, 2.2, 2.4, 3.3, 3.10, 5.1, 5.3, 5.7, 5.8, 6.1 and 6.5. They were of the view that your conduct fell short of that required of a social service worker.

On the balance of probabilities, they considered that the findings in fact amount to misconduct.

The Panel then addressed the issue of impairment. They were mindful that a finding of misconduct does not automatically result in a finding of impairment.

The Panel paid particular attention to the guidance in the case of Paula Grant referred to by the Presenter. The Panel reminded itself that the question to be addressed was whether there is impairment as at the date of the hearing. The Panel also recognised that in order to address that point it would need to identify any steps taken to remediate past misconduct. Further, the Panel needed to consider whether your behaviour is likely to be repeated. Finally, the Panel also had in mind 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 and the SSSC as regulator.

The Panel firstly considered whether your conduct was in breach of the Codes and they were satisfied that it was in breach of parts 1.4, 2.2, 2.4, 3.10, 5.1, 5.3, 5.7, 5.8, 6.1 and 6.5. They felt your conduct fell short of that required of a social services worker.

The Panel considered the submissions of the parties and had regard to the Decisions Guidance Mitigating and Aggravating factors at paragraph 8.

Insight and regret. The Panel noted that you had shown some insight and regret in relation to the events. You do not appear to have specifically apologised but you have acknowledged that your conduct was a mistake and was unacceptable. However, they noted that you do not appear to have acknowledged the impact your actions may have had on AA and your expression of regret appears limited to the effect your actions had on your colleagues. In particular, they considered your comments at page 81 of the bundle. On balance they considered this to be an aggravating factor.

Previous history. There was no previous history before the SSSC or disciplinary proceedings with an employer and the Panel accepted this was a mitigating factor.

Circumstances leading up to the behaviour. There was limited information before the Panel in relation to why you initially spoke to AA in the manner you did. XX did indicate in her evidence that your subsequent conduct may have been prompted by what AA had mumbled after he had been helped from the dining chair. It appeared to the Panel this was indicative of a person who had lost control of his actions. Therefore, they assessed this as an aggravating factor.

Length of Time since the behaviour and subsequent practise. The Panel recognised that the events occurred nearly two years before the hearing. There was no evidence of good practise since the events although the Panel was conscious of the fact that you had been suspended from the Register and, as such, unable to work in the sector. Overall, they considered this to be a neutral factor

Conduct inside or outside work. The Panel noted that the conduct occurred in the course of your duties. They considered this to be an aggravating factor.

Duress. There was no evidence before them of this being relevant. They considered this to be a neutral factor.

References or testimonials. There were no references or testimonials before the Panel. They considered this to be a neutral factor.

Cooperation with the SSSC. The Panel had regard to the submissions of the Presenter that you had not attended the hearing nor provided a statement. However, they were satisfied that you had cooperated with the SSSC to some extent and you clearly indicated your intentions in relation to the hearing. They considered this to be a mitigating factor.

Isolated incident or a pattern of behaviour. The Panel gave careful consideration to the fact that your actions were protracted and that there were opportunities for you to remove yourself from the situation. Your behaviour was very serious. However, they acknowledged that there was no evidence before them of you having behaved in this way before and as such considered this to be a neutral factor.

Consequences of the behaviour. The Panel noted that there was no evidence of physical harm to service users or your colleagues as a result of your behaviour. However, they were satisfied that your conduct caused emotional harm to AA and your colleagues and significant potential harm to service users. They considered this to be an aggravating factor.

Abuse of trust. The Panel considered your conduct amounted an abuse of the trust placed in you by your employer, service users and their families. They considered this to be an aggravating factor.

Concealing wrongdoing. There was no evidence of this before the Panel and, as such, they considered it to be a neutral factor

The Panel then considered the three step test in Cohen. They considered whether or not your conduct could be easily remedied. In the circumstances, they were not satisfied that it could. They considered your admissions at pages 23, 24 and 56 of the bundle that you have had anger management problems. Further, there was nothing before them to suggest that these had been remedied. Finally, they considered whether a repetition was likely and they considered, on balance, that it was.

The Panel therefore concluded that, on the balance of probabilities, your fitness to practise was impaired at the date of the hearing on the ground of misconduct

### **Mitigation and Sanction**

No additional evidence was presented to the Panel at this stage in the proceedings. The Panel did, however, take full account of the oral and documentary evidence that had been presented to it in the course of the hearing

#### The Presenter's submissions on mitigation and sanctions

The Presenter directed the Panel to Rule 20 and reminded them that there was an element of overlap between the impairment and sanction stages. She submitted that the Panel should consider the evidence presented to them in terms of Rule 19 when making their decision on sanction.

She argued that they should consider the need to ensure the public are protected and that the public interest is served by confidence being maintained in the social services profession and the SSSC as regulator.

She reminded the Panel of their duty to have regard to the Decisions Guidance and that a sanction is not intended to be punitive but is a tool available to a regulator to protect the public and to maintain public confidence.

The Presenter referred the Panel to Bolton v The Law Society [1993] EWCA Civ Nwachuku [2017] EWHC 2085 (Admin) and Wentzel v GMC [2004] EWHC 381 (Admin) for guidance

She argued that a profession's most valuable asset is its reputation and that outweighs the interests of any individual Worker. In considering proportionality, she argued the Panel must weigh up your interests in being able to work in your chosen profession against the harm done, or that could have been done, by your actions and the need to protect public and serve the public interest.



She relied on her submissions to the Panel during the impairment stage of the hearing.

The Presenter then referred the Panel to section 10 of the Decisions Guidance and submitted that 10.4, 10.5 and 10.6 were applicable in your case. She then took the Panel to page 20 and reminded the Panel that they must consider the least restrictive disposal first.

The Presenter submitted that when considering sanctions, the Panel was required to consider first the least restrictive sanction. She submitted that in this case there were no exceptional circumstances that might justify no further action being taken by the Panel. With regard to the available sanctions, the Presenter made submissions that can be summarised as follows.

**Warning.** A warning was not appropriate in this case given your character and the circumstances. There was no evidence to suggest that your conduct had been remedied and was unlikely to be repeated.

**Conditions.** Conditions should address the issues of public protection and be in the public interest. There were no conditions that might be imposed that might address your lack of insight or the nature of your misconduct. To be appropriate, conditions must be workable and enforceable. Further, she pointed out that there was no known employer to cooperate with any conditions and given your denial of the majority of the facts found, she could not envisage any conditions which would adequately address the situation. The Presenter submitted that, for the reasons summarised above, a warning with conditions was not appropriate in this case.

**Suspension.** She noted that the Panel could impose a Suspension Order on your Registration for up to two years but she thought that was unlikely to be meaningful at this stage. She submitted that it would not be appropriate due to the risk to public protection and public interest issues arising. She considered that the underlying issues regarding you would not be addressed by suspension.

**Removal.** The Presenter reminded the Panel that it was only appropriate to impose a Removal Order if there is no other way to protect or promote the public interest. She submitted that in your case it was necessary to protect the public and to maintain public confidence in the profession. She argued that a Removal Order was appropriate if a Worker's conduct was fundamentally incompatible with working in the social services profession.

The Presenter submitted that removal is was the only appropriate sanction in your case

Finally, the Presenter addressed the TSO which is currently on your Registration. She submitted that it should be revoked if the Panel decided on a sanction other

than removal or suspension. Otherwise she asked them to extend the TSO for four months.

### **Decision**

In reaching its decision the Panel had regard to the following factors:

Your misconduct is very serious and breaches the fundamental requirements of social services which is that social service workers must be relied upon to provide care.

### **Mitigating Factors**

- You had no previous record of wrong-doing with the SSSC.
- You engaged with the SSSC.

### **Aggravating Factors**

- You have demonstrated limited meaningful insight into misconduct and its potential consequences. In particular, you have not demonstrated insight into the effect your conduct may have had on AA.
- The Panel had little or no evidence of the circumstances leading up to initial actions. They considered the apparent trigger to your subsequent conduct to be an aggravating factor.
- The conduct occurred in the course of your duties.
- You have not expressed appropriate remorse or regret for most all of your misconduct.
- There is no evidence before the Panel that you have taken any steps to remedy the impairment to your fitness to practise.
- Your misconduct involved the abuse of trust of vulnerable service users, their families, your employer and your colleagues.
- There were significant consequences of your behaviour for AA and for your colleagues.

All of these factors suggest that, at this time, your impairment has not been remedied and that it may not be capable of being easily remedied. The Panel has concluded that it is not safe to assume that your misconduct is highly unlikely to re-occur. Consequently, the Panel has concluded that should you return to work unrestricted in the care sector, service users would be at risk of harm. In addition, the reputation of the profession and of the SSSC would also remain exposed to loss of public confidence.

The Panel is of the view that, given its findings of impairment, further action is necessary to guard against the risk that you will repeat your misconduct. In addition, your misconduct is very serious and there are no exceptional circumstances to indicate that further action is not necessary.

With regard to the available sanctions, the Panel considered the Decisions Guidance and was mindful of its duty to impose the least restrictive sanction which addressed the matter. It decided as follows.

**Warning.** A warning is not appropriate in this case. The Panel could not be satisfied that there is no future risk to the public. In view of the lack of evidence of insight or remediation, the Panel could draw no comfort regarding your future practise. They considered a warning would not mark the serious nature and unacceptability of your misconduct and would not maintain public confidence in social services.

**Conditions.** The Panel considered whether conditions might be appropriate in this case. They were of the view that it is not reasonably practicable to address your misconduct through the imposition of conditions. In reaching this conclusion, the Panel has had regard to your apparent lack of appropriate insight and fact that there was no evidence before them that you have reflected meaningfully on the nature of your misconduct. They also had regard to the fact that there is no known social services employer who could cooperate with the imposition of appropriate conditions. For the reasons set out above the Panel has decided that a warning with conditions is not appropriate in this case.

**Suspension.** The Panel has given careful consideration as to whether suspension might be appropriate. However, there is no evidence before them that you have shown appropriate insight into your misconduct. A Suspension Order would not, on its own, provide an adequate safeguard against you repeating your misconduct. For the reasons above the Panel considered that a Suspension Order with conditions is not appropriate in this case.

**Removal.** The Panel is very much aware that a Removal Order may have significant financial and reputational consequences for you and that it should only be considered where less restrictive sanctions are considered insufficient to protect the public or to maintain public confidence in social services. However, the Panel has concluded, after a very thorough consideration of the alternative sanctions available to them, all of the evidence and all of the mitigating and aggravating factors in this case, that a Removal Order is the only sanction that will provide an adequate safeguard against you repeating your misconduct. It is the only sanction that will ensure that service users and your colleagues are not placed at risk of harm and that will maintain public confidence in social services. The need to meet these objectives outweighs your personal interests and justifies removal.

**Temporary Order**

After hearing from the Presenter, the Panel decided to extend the TSO for a period of four months from when the current TSO expires, the date of effect being 5 August 2019. This would cover the period of any appeal, should you make one.