

Outcome of Fitness to Practise Panel impairment hearing held on Tuesday 1, Wednesday 2, Thursday 3 December 2020, Tuesday 5 and Wednesday 6 January 2021

Name	Patsy Russell
Registration number	3149050
Part of Register	Supervisors in a Care Home Service for Adults
Current or most recent town of employment	West Linton
Sanction	Removal and extend the current Temporary Suspension Order (TSO) until the Removal Order takes effect
Date of effect	27 January 2021

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 Tuesday 1, Wednesday 2, Thursday 3 December 2020, Tuesday 5 and Wednesday 6 January 2021, by videoconference.

At the hearing, the Panel decided that the allegations against you, as amended, 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 Supervisors in a Care Home Service for Adults.

The Panel also decided to extend the current TSO on your Registration in the part of the Register for Supervisors in a Care Home Service for Adults until the date when the Removal Order takes effect, under Rule 20.11.

Matters taken into account

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

- the bundle of papers
- late papers (as noted below)
- 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:

1. Between in or around January 2019 and June 2019, while employed as a Care Assistant at [care service name], by St Philips Care Limited, and during the course of that employment, you did:
 - a. accept sums of money from resident AA amounting to at least £600
 - b. by your actions at 1.a. above, breach your employer's policy with regard to accepting money from residents

and in light of the above, your fitness to practise is impaired because of your misconduct as set out in allegation 1. above.

Findings of Fact

The Panel heard evidence from two witnesses, ZZ and YY, along with evidence from you. In addition, the Panel was asked to admit the statements made by AA and by XX as hearsay evidence.

For the reasons which follow, the Panel finds that the allegations are established, subject to (i) deletion of the word 'June' and substitution of the word 'May' in the first line of the allegations, and (ii) deletion of the words 'at least' in allegation 1.a.

The Panel recognises, as was submitted by the Presenter, that the burden of proof is on the SSSC to establish the allegations, and that the Panel decides issues on the balance of probabilities, i.e. is it more likely than not that something happened.

As required by Rule 18.1., the Chair asked you before any evidence was heard whether you accepted any of the allegations. You said that you did not.

However, after evidence was heard, and after the Presenter had made submissions, you accepted that both allegations were established. In relation to allegation 1.a., you admitted that you had accepted £600 from AA. You had taken that money out of AA's bank account using her bank card. There was, however, you explained a context to that, namely that you had been buying items for AA.

As regards allegation 1.b., you accepted that those actions did breach your employer's policy. However, you had not read the policy at that time and were not aware at that time that what you were doing was not in accordance with the policy.

In light of the admissions made by you, it is not strictly speaking necessary for the Panel to consider the other evidence. However, for the sake of completeness, and in view of what may occur in the next stage of proceedings, the Panel will set out its views on the evidence. The Panel will for these reasons set out its views on your position that the reason you had taken money out of AA's account was because she had asked you to do that, so she could repay you for items which you had bought for her.

The evidence

ZZ

ZZ was a Care Assistant at the home at the time you worked there. She is now employed as an accounts assistant in an accountancy office.

She explained that one evening, after she had helped AA have a bath, AA told her that you owed her (AA) £600. AA said that you needed the money for rent. AA said that she had given you her bank card and that you had withdrawn the money in three separate transactions, each of £200. AA was worried that she was not going to get the money back. AA did not want ZZ to tell this to anyone. She was worried that this would get you into trouble. ZZ explained to AA that she had a duty of care to AA and she had to report it. AA became upset and told ZZ not to tell anyone.

The same evening, ZZ spoke to YY about what AA had told her. YY said that she would have to report the matter to XX. XX then asked ZZ to write a statement, which ZZ did. The statement is within the bundle of papers at pages 54-55.

ZZ gave a statement to the SSSC which is also within the bundle of papers (at pages 23 to 24). ZZ confirmed that both statements are true and accurate.

ZZ stated that she worked with AA about three days a week. She said that AA was independent up to a certain point, but needed a little bit of assistance, for example, perhaps with walking, making a cup of coffee and such like. ZZ explained that you had started working at the home about six months after her. She only knew you from work. She tended not to see you, because she worked on day shift and you worked on nights. She would only see you at the 15 minute change-over of shifts. She had not had any issues about working at the home with you.

ZZ was asked about a number of photographs which you had given to the SSSC and which form part of the bundle of papers. She was asked whether she recognised any of the items as coming from AA's room. She said that she did

not recognise many of the items as items which were in AA's room. In relation to a photograph of a throw, she said that AA did have a throw, but she was not sure if it was the same as the one in the photograph. She said that AA did have a pink cushion, but again she was not 100% sure it was the same as in the photograph. She thought that the photograph of a sheet was the same as one on AA's bed. So far as the picture of rugs is concerned, she said that she knew that AA had some rugs, but she was not sure if the photographs depicted the ones in AA's room. She did not think that AA had UGG boots which were in one of the photographs. She thought that AA used to wear "cros".

ZZ was asked about AA's memory. ZZ said that AA was quite an [information redacted], but she would not say that AA had any memory issues and her recall was quite accurate. AA did not mention to ZZ anything about having asked you to buy things for her.

So far as the policy at the home for buying items was concerned, ZZ explained that Workers can buy things for residents if the resident asks for it. However, she would go to the administrator in the office, tell them what the resident wanted her to buy and the administrator would give her the money from the resident's funds. She thinks that XX, the [information redacted] would have to agree to it also. She would then buy the item and take the receipt back. The office kept the receipt as proof of what had been bought and how much had been spent. That was the procedure throughout her employment at the care home.

YY

YY is currently registered with the SSSC, and has been registered for about four years. She is working at present as a Senior Care Assistant for [care service name] at another of its homes. She started working at [care service name].

During her time at the home, she was responsible for providing care to AA. She said that AA had capacity although sometimes she would become [information redacted] and [information redacted]. She would provide care to AA between three and five days a week depending on where YY was allocated to work.

YY explained that one Sunday she was working with ZZ. ZZ had given AA a bath and then ZZ had asked to speak to YY in her capacity as her Line Manager about something. ZZ said she did not want to get anyone into trouble. ZZ explained that AA had told ZZ that AA had given a member of staff £600 but time had gone on and AA really needed the money back. ZZ realised that if there was truth in the allegation then someone had done something wrong. YY filled in an "Untoward Incident Form" that evening (16 May 2019) (page 51). The Form states that ZZ had told YY that AA had said you owed AA £600. YY informed the manager, XX, by phone that evening. XX asked for statements from YY and ZZ. YY prepared a handwritten statement that evening (p.52-53).

The following day, YY attended a meeting with XX and AA. XX took handwritten notes. A typed version of those notes is at pages 56-57. YY said that AA was very nervous and did not want to get anyone into trouble. AA said that you owed her £600. She said she had given you her bank card and PIN number and the first time, you took £200. You took more money after that. AA said that you said it was for your rent. AA said that you had been crying in her room and saying that you were in financial difficulties. AA felt sorry for you and wanted to help you. AA thought the first time you had been given money was about three months previously.

YY also gave a statement to the SSSC (pages 30-32). However, YY had not received it and had therefore not signed it.

YY was also asked about photographs of items which you claimed you had purchased for AA. Most of the items YY did not recognise as being in AA's room. YY said that there were no new purchases in AA's room.

In terms of the procedures in force between January to June 2019 about buying things for residents, YY confirmed that the policy was as set out at paragraph 5.9.15 of the extract from the employee handbook (page 62). When YY had bought anything for a resident, she would check what they wanted, buy the item using her own money, and then admin would arrange to reimburse her. She would give the receipt to the admin staff. The money would come out of the resident's personal allowance. Occasionally, staff might ask admin for the money, get a receipt and show the item and receipt to admin once the item had been purchased. She was not aware of staff ever buying things for residents and the resident then directly reimbursing the staff member. That was not the procedure at the home

You asked YY about whether AA had said anything about you having bought things for her. YY said that AA did not mention that, AA had said she offered you money to pay for your rent.

You asked her about another Care Assistant, WW, having helped you carry items you had bought up to AA's room. YY said that WW had not mentioned that to her.

Your evidence

You started working as a Care Assistant at the care home in July 2018 (see record of application to SSSC, page 10). Prior to then you had not been working in care.

As already noted above, you accepted that you had taken money out of AA's bank account on three occasions. You accepted that AA's bank statement at page 68 of the papers showed two withdrawals of £200, one on 18 April 2019 and one on 7 May 2019. You stated that you thought these could have been withdrawals made by you, although you were not sure of the dates.

You told the Panel that you had purchased a number of items for AA's room, at her request. There were three occasions when you had made purchases. The first one was for items from B&M; the second was for clothing from Tesco's F&F range; the third was for a bathroom set of covers/mats, UGG boots and three high tables for sitting flowers on.

For reasons set out below, the Panel found your evidence about having purchased items for AA to be lacking in credibility.

Hearsay evidence

The Panel heard the hearsay evidence under reservation as to its admissibility. The hearsay evidence related to statements from AA and XX.

Rule 32.1. of the Rules provides that the Panel "may admit any evidence that would be regarded as relevant and, in terms of the Civil Evidence (Scotland) Act 1988, admissible in ordinary civil courts in Scotland".

The Civil Evidence (Scotland) Act 1988, section 2(1) provides:

"2.— Admissibility of hearsay.

(1) In any civil proceedings—

- (a) evidence shall not be excluded solely on the ground that it is hearsay;
- (b) a statement made by a person otherwise than in the course of the proof shall be admissible as evidence of any matter contained in the statement of which direct oral evidence by that person would be admissible; and
- (c) the court, or as the case may be the jury, if satisfied that any fact has been established by evidence in those proceedings, shall be entitled to find that fact proved by the evidence notwithstanding that the evidence is hearsay."

The Panel drew the Presenter's attention to two Scottish authorities on section 2(1) of the 1988 Act, namely *T v T* 2001 SC 337 and Closure Order, Fife Kirkcaldy Sheriff Court, 12 October 2007. In *T v T*, a decision of the Inner House of the Court of Session, the court said that hearsay evidence of a statement was admissible unless it concerned a matter as to which direct oral evidence by the maker of the statement would not be admissible. It noted that section 2(1)(a) introduced a general rule that hearsay evidence was admissible in the same way as direct oral evidence and subject to the same rules as to competency and relevancy of direct oral evidence.

In Closure Order, Fife, the learned Sheriff considered that the decision in *T v T* meant that there was no discretion as to whether to admit hearsay evidence (see paragraph 31).

The Panel accepts as authoritative the decision of the Inner House in *T v T* that hearsay evidence is admissible provided direct oral evidence would have been admissible. However, it is not the Panel's view that there is no discretion about admitting such evidence. The 1988 Act requires to be read in light of the provisions of the Human Rights Act 1998, in particular, the rights under Article 6 of the European Convention on Human Rights. Section 3 of the 1998 Act requires the 1988 Act to be read and given effect, so far as possible, in a Convention compatible manner. The Panel considers that the 1988 Act should be interpreted as meaning that the admission of hearsay is permitted, provided that doing so would not infringe the rights under Article 6 to a fair hearing.

The Panel has therefore approached the question of the admissibility of the hearsay evidence on the basis that such evidence is admissible provided it would not infringe your rights to a fair hearing.

So far as AA is concerned, the Panel noted that [information redacted] that she would be unable to participate in the hearing even if videoconference arrangements could have been made (which would have been difficult as there is no broadband at the home). Her evidence is clearly important as she is the source of the allegations. However, since you have admitted that you did take £600 from her bank account, the evidence of AA is much less significant. Her evidence might have been relevant about whether you had indeed purchased items for her. However, you have been able to cross examine two Workers who worked with AA and who, presumably, would have been able to see whether such items were in AA's room. There were also other ways in which you could demonstrate your purchases – by the photos you took, your own evidence, and any documentary evidence such as bank records or Paypal receipts.

In those circumstances, the Panel does not consider that there is any unfairness in admitting as hearsay the evidence of AA as contained in her SSSC witness statement.

Turning to the witness statement from XX, XX sent a message to the SSSC and to you on the morning of day one of the hearing to say that he was [information redacted]. He was therefore unable to attend the hearing. The Presenter was content to continue without his evidence. There was no request to postpone the proceedings [information redacted].

XX's evidence is, in the Panel's view, not critical given the admissions made by you about having obtained £600 from AA's bank account. As regards your position about having purchased items for AA, as noted above, you were able to put your position forward in your evidence and in any documentary evidence you wished to rely upon. You were able to cross examine ZZ and YY about these matters also. According to the minutes of the disciplinary meeting on 7 June 2019 you said that you had not told XX that you had bought items for AA and that AA had owed you money. If that is correct, it is not clear what further light XX could have shed on that issue.

The Panel considers that it would have been helpful to have XX's evidence, not least about the investigations carried out and the disciplinary process. However, it has some material relating to that.

In all the circumstances, the Panel did not consider that admission of his SSSC statement as hearsay evidence would lead to unfairness to you.

Discussion of the evidence

As noted above, the Panel has found that the allegations are established subject to the minor alterations referred to.

There is, however, a dispute about the context in which you came to receive money from AA. The Panel did not find your explanations about this to be credible or indeed reliable.

The account which you gave varied over the course of your evidence. For example, in relation to the purchase of boots, you said in your evidence in chief that AA had seen you wearing UGG boots and had asked you to buy her a pair. This was the third set of purchases, you said, which was sometime in April or May 2019.

However, the bank statement which you lodged showed a sum of £59.90 as having been paid via PayPal to [information redacted] and it is dated 5 November 2018. You then provided the Panel with a PayPal receipt for that amount of money, but it was for two pairs of boots, neither of which were UGG boots. You then said that you had bought one pair for AA and one for AA's [information redacted]. This had not been mentioned by you earlier in your evidence.

Initially, you told the Panel that all purchases were made either with your own bank card or via PayPal. However, on day three you said that in relation to the B&M purchases, you had paid using cash that AA had given to you. You then said that it was only two times that you were given AA's card to get cash. This contradicted what you said earlier and indeed later in your evidence. There was no explanation about why your evidence on this changed from one moment to the next.

Your explanation about the document showing AA's PIN number also lacked credibility (Worker's paper, page 4). You told the Panel that AA wrote her four digit PIN number and the sum '£200'. You then wrote '+ Rent' before sending this to the SSSC. You said that this was to explain that the money was for your rent. You said you were owed the money by AA and that you needed it repaid to you so you could pay your rent. The Panel found it very odd that you would write '+ Rent', not at the time this document was created but at a later date. The fact that there is reference to 'Rent' ties in with the evidence from ZZ and YY that AA had said that you needed the money to pay your rent.

The Panel also finds implausible and incredible your explanation about why you repaid £420. There is evidence that you brought £420 with you to the disciplinary hearing on 7 June 2019 and that you paid that money to the office at the home. When asked why you had done that, initially you said that it was because that was the amount that XX told you to bring. In cross examination, you were asked why you gave back £420 and not some other amount. You said that was because that is what you paid for your rent. You were then asked if £420 was the amount you paid per month, and you said that you pay whatever you can towards your rent. Despite repeated questioning, you were unable to explain why you repaid the sum of £420 and whether that had any relationship to your rental payments.

The Panel also notes that according to the disciplinary meeting minutes (page 61) you were asked if you had brought in the money that you said you owed AA. You said that you had. It is noted that you had brought in £420. It is noted earlier on in the minutes that you said AA owed you £200 for items such as boots and rugs, and that AA had paid you the £200 and the rest of the money was money that AA gave to you to help. You disputed the accuracy of that minute. It does, however, tie in with the letter of 7 June 2019. That letter states that at the hearing you said you did receive £420 from a resident, and that a proportion of the money you received (£200) was payment for these items.

In view of the inconsistencies in your evidence, the Panel is not satisfied that you purchased for AA all the items which you say you purchased. The Panel would have expected that you would have been able to provide bank statements showing card payments for at least some of the items. But the only bank statement you provided does not cover any of the purchases. The Panel finds it likely that you did purchase some items for AA, but it does not know what you purchased, when or for what amount.

Impairment

As required by the Rule, you were asked whether you admitted that your fitness to practise is impaired (Rule 19.). You did not admit that your fitness to practise is impaired. The Panel therefore heard from the Presenter as to why the SSSC considered that your fitness to practise is impaired.

The Presenter's submissions

The Presenter did not rely on any additional evidence.

He reminded the Panel that the first issue was whether the facts found proved amounted to 'misconduct'. He drew attention to *Roylance v General Medical Council* (No. 2) [2000] 1 AC 311 and *Mallon v General Medical Council* [2007] CSIH 17, where the courts have considered what misconduct means. He submitted that breaches of the Code would be evidence of behaviour that amounted to misconduct. The Presenter took the Panel through various parts of

the Code and made submissions on why these had been breached. He stated that the Panel should find that the behaviour found to have occurred did amount to misconduct.

Turning to the question of impairment of fitness to practise, the Presenter noted that the Rules do not define what is meant by that term. Rule 2.1. has some bearing on the question. The Presenter also referred the Panel to a short passage in the report of the Shipman Inquiry (para. 25.46), to *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and to *Council for Healthcare Regulatory Excellence v Nursing and Midwifery Council and Paula Grant* [2011] EWHC 927 (Admin).

The Presenter reminded the Panel that it is considering current impairment, though in doing so it can and should look at past behaviour and the steps taken to remedy it.

Finally, the Presenter took the Panel through the aggravating and mitigating factors in the Decisions Guidance (section 8) and made submissions on how each applied.

The Presenter submitted that your fitness to practise is currently impaired and there has been no remediation of the behaviour which occurred.

Your submissions

You explained that you now know that what you did was wrong, and that it was your fault because you did not read your employer's policy. You had also not read the Code.

In response to questions from the Panel, you said that you did not want to go through the parts of the Code which the Presenter had relied upon. You accepted that you did breach the parts of the Code which he had referred to.

You agreed to the Panel taking you through the mitigating and aggravating factors set out in the Decisions Guidance. Your position on these is noted below.

Throughout your evidence you maintained that the money you received from AA was to reimburse you for items that you had bought for her.

You stated that there was no risk of you doing anything similar in the future. From now on you would read everything you were given. You are a reliable person and a hard Worker, and want to be able to work in care again. Prior to being dismissed, you had taken another course to enable you to become a Care Practitioner, as you wanted to become a better care practitioner.

In the course of your submissions, you provided two references, details of which are set out below.

You urged the Panel to find that your fitness to practise is not currently impaired.

The Panel's decision

The Panel has decided that your fitness to practise is currently impaired on the ground of misconduct, for the following reasons.

Looking firstly at whether the behaviour amounts to misconduct, the Panel is satisfied that it does. In *Roylance* 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." (p.331B-C)

In *Mallon* the court said that:

"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)

The Panel is of the opinion that it ought to have been obvious to any Worker that it was not appropriate to take a service user's bank card – even with the person's permission – and withdraw money. That is so even if – as you say, but which the Panel does not accept – the money was only being used to reimburse you for items that you had bought for AA.

However, your former employer had gone further and made specific provision about what should happen if a resident offered a gift or money. The employee handbook states that:

"5.9.15 Staff are not permitted to accept any gratuities, gifts or payments from residents or relatives. If this is likely to offend or upset the person offering the gift please refer to your manager and Donations policy GCPM23."

Two witnesses, ZZ and YY, spoke to what would happen if a resident wished something purchased for them. Either money would be provided by office staff from the resident's personal allowance or staff would be refunded when they had used their own money. In either event, proof of purchase would be provided to office staff.

If you had had any doubts about whether what you were doing was proper, you could have spoken to your line manager or other staff. You did not do so. You said that you had queried with AA whether to ask your manager when she had first asked you to purchase items for her, but that she had said that you were not to do that as it was her money and she could do what she wanted with it. If

that is what happened, it indicates that you did have some doubts about the situation. You should not have been guided by what a service user wanted you to do, but should have checked with more senior staff. That is particularly so, since you had not worked in the home or indeed the care sector for very long.

Turning to the Code, the Panel is satisfied that you breached the following parts of the Code for the following reasons:

Part 2.4 - by accepting sums of money from a vulnerable service user, you were not acting in a reliable or dependable manner. You also breached the rules in place at your employment.

Part 2.5 - you did not honour the work commitments which you had signed up to, because you did not act in accordance with the policies within the care home.

Part 2.7 - you did not keep to the policies and procedures within your employment because you accepted money from someone whom you were caring for, in contravention of the practices and procedures at your place of employment.

Part 3.3 - you did not follow practices and procedures designed to keep others safe from abusive behaviour at work. Abusive behaviour can include financial and/or emotional abuse.

Part 3.6 - you were not open and honest with your employer or with AA, as you did not follow the policies and procedures in place. It also appears that some emotional harm was caused to AA. According to ZZ, AA was reluctant to say what had happened in case it got you into trouble.

Part 3.10- you did not use the power and authority which you had in a responsible manner. It was not a responsible way of behaving for you to enter into financial arrangements with AA.

Part 5.1 - your behaviour abused and harmed a service user. Abuse and harm can include financial and emotional aspects. As already noted, it appears that there was some emotional impact on AA. According to her statement, she became distressed because she had to ask for the money to be paid back to her.

Part 5.2 - you exploited your relationship with AA by entering into financial who arrangements with her. AA was an elderly lady, who was very vulnerable and relied on you to behave in an appropriate way.

Part 5.3 - the behaviour amounted to an abuse of the trust which the service user had put in you.

Part 5.8 - you behaved in a way which would bring your suitability to work in social services into question.

Part 6.1 - you did not meet relevant standards of practice in that you did not comply with the Code or your employers' procedures.

Turning, secondly, to whether your fitness to practise is currently impaired, the Panel acknowledges that, as was stated in *Cohen* 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.

It is self-evident that some conduct is more easily remedied than others. In this case, the Panel considers that the conduct could not easily be remedied. That is because the Panel has concerns about the attitude displayed by you to these events. It was surprising to the Panel that you did not appreciate at the time that it was not appropriate to do what you did – even if the events were as you described them. The Panel is also concerned that you had not read your employer's handbook. Perhaps of even greater concern is that you had not read the Code, despite having signed a document stating that you had received a copy of the Code and agreed to abide by it (page 63 of the bundle).

The Panel does not consider that you have taken any steps to remedy the conduct. You do not have sufficient insight to allow you to remedy the conduct. There has, in the Panel's view, been no genuine apology or recognition that what happened was wrong. In your Personal Statement form, for example, you attempted to shift the blame on to AA by saying that she had been a [information redacted] and should not have asked you to do something that was wrong. Likewise, in the course of the hearing you said that AA told you not to tell your manager, when you had suggested checking with him that it was okay to do what she wanted to do. These suggest a failure on your part to accept personal responsibility for your actions.

As regards the risk of repetition, the Panel considers there to be a significant risk of repetition of inappropriate behaviour. The behaviour may not be along exactly the same lines, but given your lack of appreciation of the inappropriateness of your conduct, there is a risk of you not recognising other types of inappropriate conduct.

The Panel has also taken into account the Decisions Guidance and aggravating and mitigating factors. It considers the following to be aggravating factors:

- Insight, regret and apology – reference is made to the remarks above.
- Circumstances leading up to the behaviour – the acts were not spontaneous but were planned. You eroded the professional boundaries between carer and service user by telling AA that you needed money for your rent. The Panel notes that at the disciplinary meeting on 7 June 2019 you said that some of the money was money which AA gave you to help. It is also noted at that meeting that you said you owed AA £420. However, in your evidence to the Panel you said you had only brought that amount in

because that was what you were told to bring in. The Panel did not consider that explanation to be credible.

- Conduct inside work – the conduct took place in work with a service user.
- Pattern of behaviour – you withdrew three amounts of cash. This was not an isolated incident but a pattern of behaviour.
- Consequences of the behaviour – as already noted, the consequences were that money was taken out of a service user's bank account. The service user was worried that you would not return the money to her. There was an emotional impact on the service user as she became upset when telling another carer what had happened. The service user should not have been put at risk of financial and emotional harm.
- Abuse of trust – your conduct abused the trust placed in you by service users. You were trusted to act in accordance with your employers' policies and the Code and did not do so. You were trusted not to enter into one-to-one financial arrangements with a service user.
- Concealing wrongdoing – initially when asked by your employer you did not mention that AA owed you money because you had bought things for her. Later, at the disciplinary meeting you said that you had bought some things for her and that you were owed £200, but the rest of the money was to help you. Before the Panel your evidence has been that any money you received from AA was owed to you for things you had bought for her. The Panel has already stated that it does not find your evidence to be coherent, consistent or credible. As an example, when asked why you did not initially say that you were owed money for things you had bought for AA, you said that it was only a short five-minute meeting. Even in such a short meeting it would have been an obvious thing for you to say, but you did not do so. That seems, to the Panel, to be very surprising.

The Panel considers the following factor to be a mitigating factor:

- Cooperation with the SSSC – you have cooperated with the SSSC's investigations, have agreed to two TSOs, and have participated in the hearings. That is to your credit.

The Panel considers the following factors to be neutral:

- Previous history – you were not long employed in the care sector, having started work in June 2018. The events in question date from January 2019. There is not a long enough work record in the care sector to view this as anything other than a neutral factor.

- Length of time since the behaviour and subsequent practice – since you have been dismissed and then been subject to TSO's, you have been unable to practise in the sector.
- Duress – there is no evidence of duress.
- References or testimonials – the Panel was provided with two references on day four of the hearing (5 January 2021).

The first is an email dated 7 December 2020 from VV. [Information redacted]. VV is not aware of the allegations against you and therefore did not know that his reference was to be used at this hearing. You do not know what VV does for a living.

The second reference is from (Information Redacted) dated 5 January 2021. The reference is in the form of a Word document on unheaded notepaper. It is unsigned. When asked who had sent the document to you, you were unsure who in the company had provided it. You did not explain to the company why you wanted a reference. You confirmed that the company was unaware of these proceedings. You have worked for them as a [information redacted] for about three months.

Section 8.7 of the Decisions Guidance notes that it is a matter for the Panel to decide what weight to attach to references. It states that a genuine reference is likely to be on headed notepaper and signed. The Panel notes that this is not the case with the second reference, and the first reference is an email. More significantly, neither of the authors were aware of the allegations against you or of these proceedings. It is also of note that neither of the references are from persons who worked with you in the care home. In these circumstances, the Panel considers that it cannot attach much weight to these documents. It views them as essentially neutral in reaching its decision.

In reaching its decision the Panel must also take account of the need to protect the public, and the public interest. It is evident from the foregoing that the Panel does have 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.

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 and to mark its disapproval of your conduct by finding that your fitness to practise is currently impaired.

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

The Panel decided to order your removal from the Register.

Presenter's submissions

The Presenter did not lead any further evidence or call any witnesses. The Decisions Guidance at section 13 states that the Panel must consider the least restrictive alternative. The Presenter took the Panel through the various options on sanction.

No sanction – this is not appropriate given the seriousness of the findings.

Warning – the Decisions Guidance sets out circumstances in which a warning may be appropriate. None of the factors are present in this case, according to the Presenter. The Panel have found that you have not shown insight so a warning would not be consistent with the decision of the Panel.

Conditions – further guidance is at section 15 of the Decisions Guidance as to when conditions may be appropriate. The Presenter stated that none of the factors are present. The Panel has found that there is no real acknowledgement of the failings. The Panel has said that the conduct could not easily be remedied, and has concerns about the Worker's attitude. The Decisions Guidance also indicates circumstances where conditions would not be appropriate. Other than the first bullet point, namely dishonesty, all the factors are present. Conditions would also not protect the public or address the wider public interest.

A combination of a warning and conditions would not be appropriate for the same reasons that a warning or a condition on its own would not be appropriate.

Suspension – a suspension order may be for up to a period of two years. The Decisions Guidance indicates circumstances in which suspension may be appropriate. The bullet points relating to when a suspension order may be appropriate should be read as if there were 'and' at the end of each bullet point.

A combination of a suspension and conditions order would not be appropriate for the same reasons that those orders are not appropriate on their own.

Removal order – the Decisions Guidance indicates the circumstances in which a removal order is appropriate. All of the factors listed are present. Section 10 indicates circumstances where more serious action is required. Sections 10.4 and 10.5 are relevant and apply in this case.

Your submissions

You indicated that you are not a threat to anyone, and are trustworthy. You tried to help AA. If you had read both the Code and the employers' handbook, this would not have happened. You regret what you have done. Every company you have worked for has given you a very good reference. You have never had any problems in your life like this. It is making you very worried. You do not understand why this has happened to you. It is not something that you want to have in your life. You do not want to be removed.

You have (Information Redacted). (Information Redacted). (Information Redacted). Work-wise, you make jewellery and sew on a self-employed basis. You cannot do massage therapy because of COVID-19 and are unable to work in your cleaning job for the same reason. You do not have any financial problems. (Redacted). [Information redacted]. You are not in financial difficulties.

You have already lost two years through not being able to work in the care sector since mid-2019. You intend to [information redacted] in a year or two. You are aged [information redacted]. You are not due to get your state pension until age 65 or 66, but you will be able [information redacted].

You think that a warning or some sort of supervision requirement would be an appropriate sanction.

The Panel's decision

The Panel began by considering the least restrictive sanction, under reference to the relevant parts of the Decisions Guidance. It considered that:

- No further action would not be appropriate as there are no exceptional circumstances which would justify taking no action.
- A warning would not be appropriate as it would not adequately address the impairment of your fitness to practice. The behaviour involved is not at the lower end of the scale of impairment. In addition, a warning would give no protection to service users or the public. The Panel is also not convinced that you have shown insight into why the behaviour was unacceptable, inappropriate and harmful.
- A condition would not be appropriate as there are no conditions which could be placed on you which would address why your fitness to practice has been impaired. The type of behaviour at issue relates to your attitude and understanding of what the role of a carer is, and it is therefore not the type of behaviour which conditions would rectify.
- A warning plus conditions would not be appropriate for the same reasons that such sanctions on their own would not be appropriate.
- A suspension order would not be appropriate as such an order would not protect people who use services and the public. The Panel did not consider

that a period of suspension would serve any purpose. The Panel has already indicated that it does not consider that you have shown insight into why your behaviour was unacceptable or into its impact on the service user. Further, the Panel does not accept that you have been wholly truthful in your evidence. The Panel has concerns about your trustworthiness. It is fundamental to working with vulnerable people that those caring for them are trustworthy.

- A suspension order plus conditions would not be appropriate for the same reasons that such sanctions on their own would not be appropriate.
- The Panel considers that a Removal Order is the most appropriate sanction. As already stated, the Panel is concerned about your trustworthiness. It does not accept that you have been truthful in your evidence at this hearing. The Panel's view, as expressed above, is that the version of events which you have presented to them is implausible and lacking in both credibility and consistency.

The Panel accepts that you are sorry about what has happened. No doubt you are sorry that you have ended up in this situation. However, your regret is expressed as regret for yourself and your situation. You have not expressed much, if any, concern about the effect your behaviour has had on the service user, AA, or indeed on your former colleagues, who had to deal with AA and [information redacted] about the situation.

The Panel has also taken account of the aggravating and mitigating factors referred to above. Most of the factors are aggravating factors, and do not indicate that a Removal Order would be disproportionate or inappropriate.

The Panel noted that the Decisions Guidance at section 10.4 and 10.5 indicate situations in which more serious action may be required, such as removal. Section 10.4 refers to cases where the worker has failed to provide an acceptable level of care. The Panel notes that insight and remediation are important in that context. In this case, the Panel has already indicated that there is no real insight, and that remediation is difficult because of that.

Section 10.5 refers to situations involving an abuse of trust. It makes the point that people who use services rely on workers being trustworthy. However, the Panel does have concerns about your trustworthiness.

This part of the Decisions Guidance also supports a removal order being made.

The Panel has therefore decided that a removal order is justified in order to protect the public. It also is of the view that such an order is necessary and justified in the public interest. A member of the public if fully informed of the facts would be concerned if you were allowed to continue to work as

a care Worker. A Removal Order is therefore necessary to maintain the continuing trust and confidence of the public in the social service profession and the SSSC as the regulator of the profession.

TSO

The TSO is due to expire on 1 February 2021. To take into account the period before the sanction will take effect and your rights of appeal, the Presenter asked the Panel to extend the TSO under Rule 20.11. This permits the Panel to extend a Temporary Order until the date when the sanction takes effect.

You had no objection to such an order being made.

The Panel agreed to extend the TSO until the date when the sanction of removal takes effect, in terms of Rule 20.11.

Notice

A copy of this Notice will also be sent to:

- St Philips Care Limited, your most recent Employer
- the Fitness to Practise Department, Scottish Social Services Council.