

Outcome of Fitness to Practise Panel impairment hearing held on 8, 29 and 30 September 2021

Name	Shona Alcorn
Registration number	4033674
Part of Register	Support Workers in Care at Home Service
Current or most recent town of employment	Dundee
Sanction	Removal
Date of effect	20 October 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 Wednesday 8, Wednesday 29 and Thursday 30 September 2021 via videoconferencing.

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

Matters taken into account

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

- the Act
- the Code of Practice for Social Services Workers Revised 2016 (the Code)
- Scottish Social Services Council (Fitness to Practise) Rules 2016 as amended by the Social Services Council (Fitness to Practise) (Amendment) Rules 2017 (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:

that on an unknown date in or prior to around May 2020, while employed as a Support Worker for [organisation name], you did:

- a. post the meme, at Schedule 1, to Facebook
- b. state at the top of the post "I'm fuckin' sorry in advance"

and in light of the above your fitness to practise is impaired because of set out in allegations a. and b. above.

Findings of Fact

The Panel heard oral evidence from ZZ and considered all documentary evidence before it and the submissions of the Presenter on behalf of the SSSC.

Evidence of ZZ

ZZ told the Panel that she had started working with [organisation name] in [information redacted] and provided the Panel with details of her experience and qualifications. She explained she was now [information redacted].

ZZ explained that she had first met you in [information redacted]. She said that prior to the alleged incident she had a good relationship with you at work but did not know you socially.

ZZ explained the duties that you would normally undertake on a day to day basis. These included dealing with intimate care needs of service users, many of whom have severe disabilities and mobility issues.

ZZ explained that she first became aware of the allegations when she was passed details from her Service Co-Ordinator about a phone call received from a member of the public. ZZ said she had called the member of the public who had then sent her an email containing copies of the meme posted on social media by you. ZZ confirmed that the image contained within the SSSC bundle was the copy of the meme that had been sent to her. ZZ also confirmed that the picture at the top of the post indicating who had made the post was you.

ZZ confirmed during the investigation meeting on 1 June 2020 you 'had admitted pretty quickly' that you had posted the meme and the comment at the top of the post. ZZ told the Panel that you had attempted to explain your actions by saying it was 'just banter' but accepted it might not be everyone's' sense of humour.

ZZ said she was concerned that you attempted to defend what you had done and that 'no one should post anything like that'.

When asked if she could confirm your assertions that your Facebook page and the group were private ZZ said she had seen nothing to support this and that

the group could be easily accessed just by answering a few questions. ZZ told the Panel that she thought you would have sufficient technical knowledge to be able to delete the post had you wished to do so.

ZZ confirmed that you had breached [organisation name] Social Media Procedure and Code of Conduct. She said she was also of the view that you had breached the Code of the SSSC.

ZZ said that she considered that colleagues, relatives of service users and members of the public would consider your post shocking and upsetting and it would undermine confidence in the profession. However, ZZ said that during the internal interview you did not seem to take the matter seriously. She said she was not confident you would not repeat similar behaviour in the future.

ZZ said that she could not fault your interaction with service users and that she did not have concerns with your practice.

The Presenter referred the Panel to various documents in the bundle of papers. These included the screenshot of the post; statement of YY; the Internal Investigation Minutes dated 1 June 2020 and [organisation name] Social Media Policy and Code of Conduct for staff.

The Presenter submitted that there was clear evidence, both from ZZ and in the documents, to support the allegations.

The Presenter submitted that ZZ was an open and honest witness, who had attended of her own volition and that the Panel should find her credible and reliable. He further submitted that the documentary evidence also supported the charges.

Reasons for Panels decision

The Panel considered the evidence of ZZ, all the documentary evidence before it and the submissions of the Presenter.

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

The Panel first considered allegation a. that you did:

‘post the meme, at Schedule 1, to Facebook.’

The Panel noted the meme contained in Schedule 1 of the bundle.

The Panel also noted the evidence given by ZZ. The Panel considered that her evidence fitted with the contemporaneous and non-contentious documentary evidence before it. It also considered that ZZ evidence had been consistent and

that she had not varied her position as set out in her signed witness statement provided to the SSSC. It had nothing before it to undermine the evidence given by ZZ.

The Panel further noted the Minutes of the Internal Investigation Meeting of 1 June 2020 which indicated that you then admitted posting the meme and apparently had not sought to vary your position since then.

The Panel was satisfied that, on the balance of probabilities, you did post the meme contained in Schedule 1 to Facebook. It therefore finds allegation a. proved.

The Panel then went on to consider allegation b., that you did:

State at the top of the post 'I'm fuckin' sorry in advance.'

Again, the Panel noted the evidence given by ZZ. The Panel considered that her evidence fitted with the contemporaneous and non-contentious documentary evidence before it. It also considered that ZZ evidence had been consistent and that she had not varied her position as set out in her signed witness statement provided to the SSSC. It had nothing before it to undermine the evidence given by ZZ.

The Panel further noted the Minutes of the Internal Investigation Meeting of 1 June 2020 which indicated that you then admitted posting the comment and apparently had not sought to vary your position since then.

The Panel was satisfied that, on the balance of probabilities, you did post the comment set out in allegation b. It therefore finds allegation b. proved.

Impairment

In light of the Panel's findings of fact, the Panel went on to consider whether your fitness to practise is impaired.

There was no admission of Impairment of your fitness to practise.

Evidence

There were no new papers, and no further witnesses were led.

Reasons for Panels decision

In reaching its decision the Panel took into account its findings of fact, the evidence previously presented, all papers in the bundle, and the Presenter's submissions. It also took into account the case law referred to by the Presenter, the Rules, and the Decisions Guidance.

The Presenter submitted that the allegations which have been proven are highly serious. The behaviour, which amounts to stigmatising and mocking disabled and vulnerable people would fall under paragraph 10.6 in the list of cases where more serious action may be required as an example of behaviour that is fundamentally incompatible with professional Registration. He submitted you are unfit to be a member of a caring and responsible profession as it demonstrates a serious contempt for the dignity of others.

The Presenter submitted that your actions had significant scope to cause emotional harm to members of the public generally and to the person depicted in the picture and their relations also. He further submitted that relatives of service users in your care would be highly upset and concerned for their own relatives on seeing you posting such content.

The Presenter submitted that social service workers are expected to communicate in an appropriate, open, accurate and straightforward way. He said you have shown disregard for this requirement. The Presenter submitted that by adding the comment "I'm fuckin' sorry in advance" this indicated that you were aware that the posting of such an image was gravely offensive but chose to do so anyway for your own amusement and gratification.

The Presenter submitted your actions violated fundamental tenets of the profession and that this is difficult to remedy and requires a period of subsequent good practise, an acknowledgement of wrongdoing and for you to take significant steps to ensure that such an incident does not happen again. He submitted that the SSSC is not satisfied that you have taken meaningful steps towards remediation.

The Presenter submitted that you do not fully understand the seriousness of your actions. He noted you described your actions as banter, indicating you considered that they fell within the spectrum of acceptable humour, albeit perhaps on the fringes, rather than acknowledging what it is – grossly offensive and discriminatory.

The Presenter submitted that there is no evidence of remediation and that the risk of repetition is relatively high.

The Presenter submitted that whilst you made allusions to [Information Reacted] which you assert contributed to the behaviour, there is no information to support this.

The Presenter submitted that your actions had significant scope to cause emotional harm to members of the public generally and to the person depicted in the picture and their relations also. He pointed out that the member of the public, who brought the matter to your then employer's attention was upset by it, and said it was disgusting. He submitted there is a genuine public protection concern.

The Presenter submitted that your behaviour was highly serious and breached the fundamental tenets of the profession and would significantly impact the reputation of the profession and the public confidence in the profession and the SSSC as an effective regulator.

The behaviour falls far short of what is expected of social service workers in a position of trust. There is a pressing need to reaffirm the standards of practice expected of social service workers as a result of your actions.

A reasonable person in possession of all the information, would expect that the behaviour would be addressed robustly by the regulator. Public confidence in the service, the profession as a whole and the SSSC as regulator are likely to be significantly negatively affected if no action is taken as a result of your misconduct.

Therefore, the public interest in this case is high.

Reasons for the Panel's decision

The Panel firstly considered the allegations found proved, in the context of misconduct.

The Panel kept in mind that impairment is a matter for the skilled judgment of the Panel. It bore in mind the need for fairness and proportionality as set out in Section 7 of the Decisions Guidance.

In considering questions of misconduct, the Panel had regard to the views set out in the case of *Roylance and Calheam*. It noted that there was no precise statutory definition of misconduct, but that the conduct should be serious and that it should involve some act or omission falling short of what would be proper in the circumstances.

The Panel considered your conduct in light of the Code. The Panel noted the submissions of the Presenter that parts 2.2 and 5.8 of the Code had been breached.

Parts 2.2 and 5.8 state:

'2.2 - Communicate in an appropriate, open, accurate and straightforward way:

5.8 - Behave, while in or outside work, in a way which would bring my suitability to work in social services into question.'

The Panel further noted parts 5.1 and 5.5 of the Code which state:

'5.1 - Abuse, neglect or harm people who use services, carers or my colleagues.

5.5 - Discriminate against people who use services, carers or my colleagues.'

The Panel considered that your actions in allegations a. & b., as found proved breached these sections of the Code.

The Panel recognised that breaches of the Code do not automatically result in a finding that impairment exists, but that the Code sets out standards to be expected of social service workers.

The Panel therefore considered whether your behaviour, as found proved, amounted to misconduct. The Panel considered that the allegations were serious, and your actions stigmatised and mocked disabled people. They considered you demonstrated a serious contempt for the dignity of others and abused the trust put in you by service providers and service users not to act in a manner that may put individuals at risk of emotional harm and undermine confidence in the profession.

The Panel considered that you posted highly offensive content on Facebook, the content of which caused distress to a member of the public, who also identified you, causing them to contact the service to report the issue, appalled at an action from someone working in social services. The Panel considered that relatives of service users in your care would be highly upset and concerned for their own relatives on becoming aware of the post. The Panel also noted that, when you posted the meme and comment you were working with potentially service users in your own work who may be in [information redacted].

The Panel concluded that when you posted this content you were aware it was offensive but chose to do so anyway. The Panel determined that your actions fell under section 10.6 of the Decisions Guidance where more serious action may be required as an example of behaviour that is fundamentally incompatible with professional Registration.

The Panel considered that your actions fell far short of the standards expected. The Panel concluded that your behaviour did amount to misconduct.

The Panel next considered whether, in all the circumstances, your fitness to practise is impaired as a result of the misconduct. It bore in mind that it had to consider whether your fitness to practise is currently impaired.

The Panel had careful regard to the guidance in the cases of *Cohen* and *Grant*. It noted the need to take into account public protection, the wider public interest, whether the misconduct was easily remediable, whether it had been remedied, whether it was likely to recur, and whether you had demonstrated any insight. It noted the need to consider current rather than past impairment. It noted in particular that the need to maintain confidence in the profession, and the need to declare and uphold proper standards so as to maintain public

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

The Panel was of the view that the behaviour was serious. It considered that issues of public protection were raised by the case. It considered that there was a clear public interest in the allegations. It took the view that the allegations which had been proved, could affect public confidence in social services. It took the view that they could affect the public perception of standards in the profession.

The Panel considered that your misconduct was remediable, albeit it would be difficult to do so. However, the Panel determined that you have failed to show any understanding of the nature and extent of your misconduct and its consequences. The Panel considered that your position in the internal investigation demonstrated a deliberate attempt to minimise the seriousness of your misconduct. You have failed to express any regret or remorse about the effect that your misconduct might have on services users, their families, colleagues, members of the public and public confidence in the profession.

The Panel considered that you have failed to demonstrate any insight into your actions and their consequences. There was no evidence available to the Panel to suggest that you have taken any steps to remedy your behaviour. The Panel noted that during the internal investigation you had raised [information redacted] and appeared to suggest that these may have caused or contributed to your actions. However, the Panel had no independent information before it to confirm the existence of such issues or whether they affected your behaviour.

In all the circumstances, the Panel had to conclude that there was a real risk of repetition if you were to find yourself in similar circumstances.

The Panel also considered the various mitigating and aggravating factors set out in section 8 of the Decisions Guidance in assisting it to come to its decision.

Insight, regret and apology

The Panel considered that you have shown little if any insight, regret or remorse. Rather, the Panel considered that you have deliberately sought to minimise the seriousness of your actions. The Panel considered this was an aggravating factor.

Previous history

You have a previous good history with the SSSC, and your employer has detailed no previous concerns. However, the Panel was of the view that a worker should practice in compliance with the Code and act appropriately. The Panel therefore considered this matter to be neutral.

Circumstances leading up to the behaviour

The Panel noted that you made mention of [information redacted] during the internal investigation. However, there was no independent information before the Panel to verify these matters. The Panel therefore considered this as neutral.

Length of time since the behaviour and subsequent practice

The Panel noted that the post appears to have been made in May 2020.

However, you do not appear to have worked in the sector since and therefore there has been no conduct in the sector since to evaluate. The Panel therefore considered this as neutral.

Conduct inside or outside of work

There was no information before the Panel on this matter and therefore the Panel considered this as neutral.

Duress

There is no information available to the Panel which would indicate duress and it therefore assessed this as neutral.

References or testimonials

Other than the comments made by ZZ in her evidence, which were her own subjective opinion of your practice, there were no references or testimonials before the Panel. The Panel therefore assessed this as neutral.

Cooperation with the SSSC

The Panel noted that you have not engaged with the SSSC process in any meaningful way. The Panel therefore assessed this as an aggravating factor.

Isolated incident or a pattern of behaviour

The Panel considered that this appears to have been an isolated incident and there is no information to indicate a pattern of behaviour. However, you appear to remain on Facebook. The Panel assessed this as neutral.

Consequences of the behaviour

The Panel considered that relatives of service users, service providers and the public would be highly upset and emotionally harmed by your misconduct. The Panel therefore assessed this as an aggravating factor.

Abuse of trust

The Panel considered you demonstrated a serious contempt for the dignity of others and abused the trust put in you by service providers and service users not to act in a manner that may put individuals at risk of emotional harm and undermine confidence in the profession. The Panel therefore assessed this as an aggravating factor.

Concealing wrongdoing.

There is no evidence that you sought to conceal your wrongdoing. The Panel therefore assessed this as a mitigating factor.

In all the circumstances, the Panel concluded that there would be significant public protection concerns if you were to return to practice. There was a real risk of repetition of the behaviour and no indication that any steps had been taken to address the concerns.

The Panel noted that maintenance of public confidence in the standards of the profession, was a legitimate factor to take into account. It took the view that a reasonable member of the public would be concerned if the Panel was to decide that you could safely practice without restriction. It took the view that your behaviour risked damaging public confidence in the profession.

Weighing up all the circumstances and relevant factors, the Panel concluded that your fitness to practise as a social service worker is impaired as of today's date. It is impaired on the grounds of your misconduct, both in respect of public protection and public interest.

Sanction

Presenter's submissions

The Presenter referred the Panel to Rule 20 and in particular Rule 20.9. which directs that the Panel should have regard to the evidence presented in terms of impairment and take into account the following factors: the seriousness of your impairment; the protection of the public; the public interest in maintaining confidence in social services; and proportionality.

In addition, the Panel should have regard to the need to consider the financial and reputation risks involved for you.

The Presenter referred the Panel to the Decisions Guidance and that it outlines the aggravating and mitigating factors which ought to be taken into account in considering the question of the sanction and the Panel have already been addressed in relation to these. He also referred the Panel to the case of *Gupta v GMC* [2001] UKPC 61.

The Presenter submitted that particular regard be had to section 10.6 of the Decisions Guidance. He submitted your behaviour identifies you as being unfit to be a member of a caring and responsible profession as it demonstrates a serious contempt for the dignity of others.

The Presenter submitted that no further action would not be appropriate as the Panel have found that your fitness to practise is impaired it is necessary to take action in the public interest and in terms of public protection. He submitted that this outcome is only opted for in exceptional circumstances which was not the case here.

He further submitted that a warning would not be because your behaviour is serious and constitutes a breach of the fundamental values and tenets of the profession and would not sufficiently address the failing to meet the expected standards of conduct nor sufficiently manage the risk of repetition.

The Presenter submitted that the imposition of conditions on your Registration would not be appropriate. He submitted that the behaviour constitutes a breach of the fundamental values and tenets of the profession and therefore requires more serious action and that there are underlying values issues which could not be addressed by conditions. He submitted that you have shown no propensity for remediation and that no workable conditions could be formulated to address the public protection and public interest concerns.

The Presenter submitted that a combination of a warning and conditions would not be submitted for the reasons already noted.

The Presenter submitted that suspension would not be appropriate as there appears to be significant underlying values issues and you have failed to demonstrate meaningful remediation or a significant and developed level of insight.

The Presenter also submitted that there is no information to suggest to the SSSC that there is a realistic prospect of a temporary suspension remedying your issues and would only seem to be a punitive measure which would also fail to fully address the public interest concerns raised.

Similarly, a combination of a suspension and conditions would not be appropriate for the reasons already outlined.

The Presenter submitted that the only appropriate sanction was removal from the Register. He submitted that your behaviour is a serious departure from the relevant professional standards set out in the Code and is fundamentally incompatible with continued professional Registration. There has been a persistent lack of insight into the seriousness of your actions and the consequences, and your behaviour is difficult to remedy and there is no evidence that you have even begun to do so or a likelihood that you will.

He referred the Panel to the case of *Bolton v the Law Society* [1993] EWCA Civ 32 which states at paragraph 15

'A profession's most valuable asset is its collective reputation and the confidence which that inspires-'

And at Paragraph 16

'The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price'

Reasons for Panel's decision

In reaching its decision, the Panel took into account its findings of fact, its decision on impairment, the evidence previously presented, all papers in the bundle, and the submissions from the Presenter. It also took into account the Rules and the Decisions Guidance. It had regard to the factors referred to at Rule 20.9.:

- the seriousness of your impairment of fitness to practise;
- the protection of the public;
- the public interest in maintaining confidence in social services; and
- the issue of proportionality.

The Panel took account of the Decisions Guidance, including sections 6, 7, 8, 13 and 15.

The Panel kept in mind that any sanction required to be appropriate and proportionate. The decision on sanction was a matter for the Panel, exercising its skilled judgment. The Panel recognised that any sanction imposed was not intended to be punitive in its effect, although it might have such consequences.

The Panel kept in mind its previous decision on impairment. It concluded that your behaviour was serious and that you had failed to show any understanding of the nature and extent of your misconduct and its consequences. The Panel has also concluded that during the internal investigation you deliberately attempted to minimise the seriousness of your misconduct and have failed to express any regret or remorse about the effect that your misconduct might have on service users, their families, colleagues, members of the public and public confidence in the profession. The Panel also kept in mind that you have failed to demonstrate any insight and have not sought to remediate your misconduct or engage with the SSSC in any meaningful way.

The Panel also kept in mind its conclusion in respect of mitigating and aggravating factors set out in its decision on impairment.

The Panel also noted that in your limited communication with the SSSC you have stated you do not wish to work in the social services sector in the future and asked to be voluntarily removed from the Register.

In its deliberations, the Panel kept in mind the need for public protection. It also bore in mind the possible effect of your actions on the reputation of the profession, the need to maintain its standards and the wider public interest. It kept in mind that it had to consider your interests, and the potential financial or reputational effect on you, as part of a balancing exercise in ensuring that its decision was proportionate in the circumstances.

The Panel then considered the question of sanction. The Panel took account of the information set out in section 13.2 of the Decisions Guidance. It kept in mind that it had to start by considering the least restrictive sanction first, and to continue working up each level of sanction until it arrived at the least restrictive level that adequately addresses the behaviour and satisfies public protection and public interest concerns.

The Panel did not consider that it was appropriate to impose no order. The behaviour was serious and there were no exceptional circumstances which would warrant taking no action.

A warning alone was not appropriate. This was not a case at the lower end of the scale. The Panel did not consider that it was appropriate that you could be allowed to return to work in the sector without restriction. There were public protection risks, and the public interest also required a more substantial sanction to be imposed. There was no evidence of insight on your part, nor of any steps to remedy the behaviour. A warning would not address the issues identified by the Panel.

The Panel did not consider that conditions would address matters adequately. Your misconduct constitutes a breach of the fundamental values and tenets of the profession. You had not engaged with the process and the Panel could have no confidence that you would cooperate with conditions. There was no evidence of any insight or understanding on your part. In any event, the Panel was unable to identify any conditions that could sufficiently address the issues that they had identified. It was unable to identify conditions which would address the attitudinal and values issues that appeared to be present. The Panel did not consider that there were any conditions that would address the public protection concerns. It did not believe that conditions would satisfy the wider public interest issues it had identified.

A warning with conditions would not be appropriate, for the reasons previously identified.

The Panel then went on to consider the imposition of a Suspension Order. It concluded that a Suspension Order was not appropriate. The Panel has determined that there are underlying issues about your values and you have

failed to demonstrate any insight or remediation. There was nothing to suggest to the Panel that your behaviour and attitudes would be remedied by a period of removal from practice. It could not conclude that your failings would be remedied by temporarily restricting you from practising. The Panel determined that a Suspension Order would not address the serious regulatory concerns arising from the allegations found proved.

As a Suspension Order was not appropriate, and no particular additional areas of concern that might be addressed by conditions had been identified, a Suspension Order with conditions was not appropriate.

The Panel therefore came to the conclusion that the appropriate sanction was a Removal Order. It agreed that this was appropriate in the circumstances of this case. It noted that there had been allegations found proved which amounted to serious misconduct. You have sought to downplay the seriousness of your actions and failed to express any regret or remorse about the effect that your misconduct might have on services users, their families, colleagues, members of the public and public confidence in the profession. You have not demonstrated any insight into the seriousness of your actions and their consequences. There was a serious departure from the relevant professional standards set out in the Code and you have failed to demonstrate any remediation. There remains a high risk of repetition.

The Panel had no knowledge about your current circumstances. It accepted that it was likely that a decision to remove your name from the Register would have financial and reputational consequences for you, but it considered that these were outweighed by the need for public protection, the need to protect the reputation of the profession and the need to maintain public confidence in the profession.

The Panel agreed that removal was an appropriate and proportionate outcome and it therefore decided to impose a Removal Order, removing your name from the Register.