

**Outcome of Fitness to Practise Panel impairment hearing held on
Tuesday 4 and Wednesday 5 June 2019**

Name	Dokubo Bokolo
Registration number	3119426
Part of Register	Support Workers in Care Home Service for Adults
Current or most recent town of employment	Aberdeen
Sanction	Removal
Date of effect	22 June 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 Tuesday 4 and Wednesday 5 June 2019 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

At the hearing, the Panel decided that 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 a Care Home Service for Adults. Further, the Panel decided to extend the Temporary Suspension Order (TSO) on your Registration for a period of one month.

Matters taken into account

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

- the bundle of papers
- 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)
- the 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. on 16 October 2018 at Aberdeen Sheriff Court, you were convicted of the following offences:
 - a. On 12 July 2017 at [address redacted] or elsewhere meantime to the prosecutor unknown you did record AA doing a private act with the intention of enabling yourself or another to look at the image of the said AA doing the act in that you recorded yourself having sexual intercourse with the said AA; contrary to section 9(1) and (4) of the Sexual Offences (Scotland) Act 2009
 - b. On 26 July 2017 at [address redacted] or elsewhere meantime to the prosecutor unknown you did intentional cause AA to look at a sexual image in that you did send her a sexually explicit recording; contrary to section 6 of the Sexual Offences (Scotland) Act 2009
 - c. On 29 July 2017 at [address redacted] you did have in your possession extreme pornographic images [information redacted] contrary to the Civic Government (Scotland) Act 1982 section 51A(1)
2. while registered with the SSSC on the part of the Register for Support Workers in a Care Home Service for Adults:
 - a. you did fail to inform the SSSC on exact dates unknown, prior to on or around 16 October 2018, that you had been charged with the offences described at allegation 1
 - b. on dates between on or around 16 October 2018 and on or around 15 November 2018, you did fail to inform the SSSC that you had been convicted of the offences described at allegation 1

Findings of Fact

Presenter's submissions

The Presenter took the Panel to the various papers in the bundle that she wished to rely upon.

The Presenter reminded the Panel that at this particular stage of the proceedings the Panel's task was to ascertain if the allegations had been proved on a balance of probabilities and that the burden of proof rests on the SSSC and referred to Rule 32.

She took the Panel to Rule 32(8) and, in terms of the Rule, the findings of fact and certification of conviction of any criminal court in the United Kingdom are

conclusive proof of the facts and conviction, therefore the Panel did not require to look beyond this in respect of allegations 1.a, b. and c.

The Presenter submitted that there is sufficient evidence to prove the allegations as detailed at 2.a and b., based on the information provided by ZZ and your signed interview with your employer dated 23 November 2018.

Submissions from you

As you were not in attendance, the Panel did not have the benefit of hearing from you. The Panel did have before them your signed interview with your employer and your submissions at the Temporary Order (TO) hearing, pages F21-F22 in the bundle of papers.

Discussion of the evidence

Allegations 1.a and b.

The extract conviction and a certified copy of Section 92(2) Sexual Offences Act 2003 were before the Panel and were referred to by the Presenter. You admitted the convictions in your signed interview with your employer dated 30 November 2018.

In terms of Rule 32(8) the findings of fact and certification of conviction of any criminal court in the United Kingdom are conclusive proof of the facts and conviction.

Allegations 2.a and 2.b

Documentary evidence was led by the Presenter to support that you were aware of the charges and the subsequent conviction and had not reported this to the SSSC (pages F65, F69 and F77). Your signed interview dated 23 November 2018, with your employer was also led in support of allegations 2.a and b. In that interview you acknowledged the convictions but explained that you were not aware of the importance of reporting the convictions. The matter was first brought to the attention of the SSSC on the 15 November 2018, found in the referral form from ZZ, Operations Manager, reporting the matter to the SSSC, F27-F44 in the bundle.

The Panel's findings of fact

There was no agreed statement of facts. The Panel took into account the evidence led from the papers referred to by the Presenter in the bundle, the submissions from the Presenter, your signed investigative interview with your employer and the submission you made at the TO hearing, and made the following findings in fact on the balance of probabilities:

- You were admitted to the part of the Register for Support Workers in a Care Home Service for Adults on 19 June 2018.
- The Panel found allegations 1.a, b. and c. proved.
- The Panel found allegations 2.a and b. proved.

Impairment

In light of its findings of fact, the Panel next considered whether your fitness to practise is impaired. The Panel's approach to this decision is set out below.

Admissions

You have not admitted that you have committed misconduct or that your fitness to practise is impaired by reason of misconduct.

Evidence

You did not give evidence.

The Presenter did not present any further evidence at this stage of the proceedings.

Presenter's Submissions

The Presenter referred the Panel to the Rules and procedures to be followed at this stage. She submitted that your conduct amounts to misconduct and that it is the Panel's task to determine whether your fitness to practice is currently impaired, and if so, on what basis. The Presenter addressed the Panel on the concept of impairment and directed the Panel to a number of authorities in case law. The Presenter also referred to a number of authorities for guidance on misconduct.

The Presenter invited the Panel to find that your fitness to practise was currently impaired on the ground of your conviction, as set out in allegation 1.a, b. and c. and by reason of your misconduct in allegation 2.

The Presenter took the Panel to four considerations:

- Seriousness – the offence was most serious; it was of a sexual nature and you had been placed on the sex offenders register for a period of five years. The Presenter referred to the Code in force at the time and referred to Parts 5.7, 5.8 and 6.3; that the behaviour is fundamentally incompatible with professional Registration.

- Risk of repetition - she acknowledged the SSSC position was the risk of repetition was low. You had apologised to AA at the time and it was not a premeditated act.
- Public protection - the SSSC were not relying on grounds of public protection.
- Public interest - There are public interest concerns. The public would be concerned about a person convicted of sexual offences being fit to practice; offences which resulted in you being placed on the sex offenders register for a period of five years. Reputational damage to the SSSC as the regulator has to be considered. The seriousness of the conviction and the public interest matters alone are substantial enough to mean that you should be regarded as being impaired.

Submissions from you

The Panel did not have the benefit of hearing from you as you did not attend the Impairment hearing. The Panel had sight of your signed interview and your submissions at an earlier hearing, namely a TO hearing. The Panel also had a late email from you on the second day of the hearing, dated 5 June 2018, in which you advised the Panel of the impact of the case on your health, and asked to take into consideration the impact on your career and reputation.

Panel's Decision

The Panel, having made the findings of fact above, turned to consider the issue of impairment of fitness to practise, as set out in Rule 19.

The Panel took into account the evidence led from the papers referred to by the Presenter in the bundle, the submissions from the Presenter, your signed investigative interview with your employer, the submission you made at the TO hearing and your email dated 5 June 2019 admitted as a late paper.

Impairment is addressed in Rule 2.2 of the Rules which states that:

"A worker's fitness to practise may be impaired by one or more of the following grounds:

- a. misconduct;*
- e. a conviction in the United Kingdom....."*

The remaining grounds are not relevant to the present case.

"Misconduct" is a word which is not defined within the Rules. The Panel was reminded of the guidance contained in the case of *Roylance v The General Medical Council* [1999] UKPC 16, in which Lord Clyde indicated that:

"Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances."

There is no definition of fitness to practise or of misconduct in the Rules. In terms of Rule 2.1, a Worker is fit to practise if they meet the standards of character, conduct and competence for them to do their job safely and effectively with particular regard to the Code. The Panel is required to analyse the Code and to apply the relevant case law to determine whether impairment on the grounds of misconduct has been established.

The Panel turned to consider the issue of misconduct. The Panel firstly considered whether the facts found proved amounted to misconduct. In doing so, the Panel had regard to the guidance in *Roylance v General Medical Council* (1999) UKPC16, referred to above.

In respect of the findings of fact, the Panel was able to assess your conduct specifically by reference to the Code in force at the time. The Panel noted the meaning of fitness to practise contained in Rule 2, which obliges Workers to comply with the Code. It considered the obligations on a Worker contained in the Code. In particular, it noted that Workers are obliged not to behave, inside or outside work, in a way which would bring into question their suitability to work in social services and should tell their employer about any personal difficulties that might affect their fitness to practice.

The Panel considers that your conduct, giving rise to the conviction and failure to advise the SSSC of the charges and conviction that followed, breached the provisions of the Code referred to above, namely Parts 5.8 and 6.3.

Reasons for the Panel's decision on impairment

In coming to its decision on impairment, the Panel must assess the current position, not the past conduct. However, the Panel must also consider what you have done in the past as it is relevant to the current position.

In looking forward, the Panel is required to take account of such matters as to the insight you have displayed into your past behaviour and the source of your misconduct, any remedial steps which have been taken and the risk of the recurrence of such misconduct.

The Panel considers that you have been convicted of serious offences. These offences led to you being subject to the notification period under the Sexual Offences Act 2003 for a period of five years. The consideration for the Panel is whether your fitness to practise is currently impaired as a consequence of your conviction and failure to notify the SSSC, as set out in allegation 2.

The Panel had regard to the considerations relevant to deciding if there is impairment of fitness to practise as referred to in case law by the Presenter, in particular *CHRE v NMC* and *Grant* [2011] EWHC 927 and in *Cohen v GMC* [2008]

EWHC 581. The Panel asked itself whether your conduct was remediable, whether it had been remedied and whether it is highly unlikely to recur. It considered whether your behaviour could be considered as isolated with little risk of repetition. It looked at the steps taken by you to remedy your past behaviour and considered the level of insight demonstrated by you. At all times, the Panel had in view 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.

The Panel noted the Presenter is inviting the Panel to find impairment based solely in respect of public interest grounds, namely that of the public interest in maintaining public confidence in the Register and the reputation of the SSSC as the regulator.

The Panel bore in mind the very high standards with which the Panel is entrusted with upholding, and had regard to the case of *Bolton v The Law Society* (1993 EWCA Civ32) and to the Decisions Guidance, that a profession's most valuable asset is its collective reputation and the confidence that inspires.

The Panel also considered both mitigating and aggravating factors and took into account the following factors in coming to that decision.

Aggravating factors

Seriousness of the behaviour. Whilst the Panel accepted that the behaviour complained of occurred before you took up registerable employment, the matter was further aggravated by failing to inform the SSSC that you had been charged with the offences and then failed to notify them of your conviction as set out in allegation 1, and that this could be viewed as a breach of trust.

Consequences of the behaviour. You are currently subject to a notification period under the Sexual Offences Act 2003 and will be for a period of five years from 16 October 2018.

Mitigating factors

It was an isolated incident, not a premeditated act. You apologised to AA at the time. You admitted the convictions in your signed interview with your employer and there are no previously disclosed convictions.

Neutral

The Panel recognised that you have not been employed as a Support Worker in a Care Home Service for Adults since the date of your suspension by your employer on 1 November 2018 and your subsequent dismissal on 30 November 2018. As a result, you will have had limited opportunity to demonstrate that your behaviour has been remedied.

Risk of Repetition

The Panel agreed with the Presenter that the risk of repetition is perceived to be low.

Conclusions

The Panel recognises the mitigatory factors recorded above minimises the public protection risks, as does the notification period for five years. The Panel, however, has to consider the nature of your behaviour in respect of allegations 1.a and 1.b, and the consequences of that behaviour, namely that you are currently subject to the notification period under the Sexual Offences Act 2003. In the view of the Panel, the nature of the conviction with the consequences that followed are relevant, carrying significant weight as to a finding of impairment in considering public interest. In considering the public interest, the Panel were of the view that the need to uphold proper standards and confidence in the profession and the SSSC as the regulator would be undermined if a finding of impairment was not made. Service users and the wider public place trust in the SSSC as the regulator. There would be a risk in maintaining public confidence in the Register if a finding of impairment was not made in regard to a person who did not disclose a conviction to the regulator and who is currently subject to a notification period under the Sexual Offences Act 2003 as a result thereof. In the absence of any regulatory action taken by the SSSC in respect of the conviction and the misconduct, the service users and the public may not have the confidence to engage with you. Accordingly, the Panel decided that your fitness to practise is currently impaired as a result of the conviction and misconduct found.

Sanction

Evidence

No additional evidence was presented at this stage.

The Panel did, however, take account of all the documentary evidence that had been before the hearing. It also had regard to submissions made in the earlier parts of the hearing, to submissions made at the stage on sanction and to all the representations and earlier submissions made by you.

[Information redacted]. The Panel also noted from the submissions you made at the previous TO hearing, and in your email, that you were concerned about the impact an order would have on you personally and upon your career prospects.

Presenter's submissions on sanction

The Presenter referred the Panel to the Rules and procedures to be followed at this stage.

The Presenter took the Panel to Rule 20.9 and narrated the factors that should be considered at this stage.

The Presenter referred to the Decisions Guidance and submitted that the Panel must start by considering the least restrictive outcome first and work upwards from there until they reach the option which best addresses the behaviour.

The Presenter submitted that the Panel, in terms of proportionality, must carry out a balancing exercise between your interest in practicing in your chosen profession and the interests of the wider public.

The Presenter took the Panel in turn through all the potential outcomes as set out in Rule 20(2).

The Presenter listed a number of aggravating factors, in particular the seriousness of the offence and being on the sex offenders register.

On mitigatory factors, she accepted that you had apologised to AA at the time, that you had engaged with the SSSC, had not previously come to the attention of the SSSC and that you had no previous convictions.

In conclusion the Presenter submitted that a Removal Order was the appropriate action in this case: that your behaviour was incompatible with working in social services.

Decision

The Panel decided to impose a Removal Order in relation to your Registration in the part of the Register for Practitioners in a Care Home Service for Adults, in terms of Rule 20.2.g. Any TO currently in place should continue for a period of one month from 5 June 2019.

Reasons for Decision on Sanction

The Panel took into account the Presenter's submissions and the information provided by you.

The Panel had regard to the aggravating and mitigating factors of this case as set out in the Panel's decision on impairment above [information redacted]. The Panel also recognised that, although not present at the hearing, you had previously engaged at the TO hearing and had emailed the Panel about the impact the case has and will continue to have if an order is made against you.

The Panel considers that your behaviour represents a serious departure from the standards set out in the Code in place at the time. It represents unacceptable behaviour.

There are public interest concerns and ongoing public interest concerns for the period of time that you will be subject to the notification period under the Sexual Offences Act 2003.

There would be a reasonable expectation on the part of the public that a sanction would be imposed given the finding of impairment. The Panel began with consideration of the least restrictive sanction. A warning on its own would not address the seriousness of your impairment and would not address the issue of public confidence in the SSSC as the regulator.

It was the view of the Panel that conditions, with or without a warning, are not appropriate in respect of the allegations. It is the understanding of the Panel that you are not in registerable employment. The fact that you are not working in the sector is not an automatic bar to conditions being imposed. However, it was the view of the Panel that given the nature and seriousness of your behaviour, the Panel was unable to formulate workable or enforceable conditions that would serve the wider public interest.

It was the view of the Panel that a Suspension Order, with or without conditions, is not appropriate given the seriousness of the behaviour. A Suspension Order, which in terms of the Rules cannot exceed two years, would serve no useful purpose as the notification period would not have expired. Thus, in view of the Panel, the public interest would not be served.

It was the view of the Panel that it is appropriate to impose a Removal Order in relation to your Registration. The Panel was satisfied that the findings in relation to impairment are sufficiently serious as to affect your fitness to practise as a social service worker. The Panel acknowledged that a Removal Order will have financial and reputational consequences for you. It was the view of the Panel that any such consequences for you are outweighed by the need to uphold public confidence in the SSSC as the regulator and by doing so, serve the wider public interest to protect the integrity of the Register and the reputation of the SSSC as regulator. There would be a serious impact on public confidence in the SSSC as regulator if a person currently subject to a notification period under the Sexual Offences Act 2003 was allowed to work with vulnerable adults. In all the circumstances, it is the view of the Panel that it is both fair and proportionate to impose a Removal Order.