

Outcome of Fitness to Practise Panel impairment hearing held on Monday 17, Tuesday 18, Wednesday 19 and Thursday 20 February 2025

Name	Derek Morton
Registration number	1149015
Part of Register	Children and young people's worker
Current or most recent town of employment	Cumnock
Sanction	Removal
Date of effect	15 March 2025

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

1. This is a Notice of the decision made by the Fitness to Practise Panel (the Panel) of the Scottish Social Services Council (the SSSC) which met on Monday 17, Tuesday 18, Wednesday 19 and Thursday 20 February 2025, by video conference.
2. At the hearing, the Panel decided that all the allegations against you were proved, some with amendments, that your fitness to practise is impaired and made the decision to impose a Removal Order on your Registration on the part of the Register for children and young people's worker.

Matters taken into account

3. In coming to its decision, the Panel had regard to these documents:
 - the Act
 - the Code of Practice for Social Services Workers 1st Edition (the Code)
 - Scottish Social Services Council (Fitness to Practise) Rules 2016 as amended by the Scottish Social Services Council (Fitness to Practise) (Amendment) Rules 2017 and 2021 (the Rules)
 - Decisions Guidance for Fitness to Practise Panels and Scottish Social Services Council staff dated November 2022 (the Decisions Guidance)
 - the hearing papers (the papers).

Allegations

4. The allegations against you are that while employed as a Senior Residential Worker at [information redacted], and during the course of your employment, you did:

1. on or around 15 May 2016, send BB, the then partner of service user AA, messages of a sexual nature via Facebook messenger, in particular you did state:
 - a. "That Sunday? Lol it made me horny as hell! Lol x"
 - b. "You were telling me what you like"
 - c. "Ok! Lol. You not horn then? Lol xx"
 - d. "I do love sex don't you?"
 - e. Your behaviour at allegations 1a.d. were sexually motivated.
2. in or around 2016, during a previous SSSC investigation when service user AA raised concerns about your behaviour with your employer, namely that you had sent BB messages of a sexual nature:
 - a. contact AA on several occasions to attempt to persuade him to retract his concerns
 - b. by your actions at 3.a and b above cause AA distress by asking him to act dishonestly by concealing your wrongdoing
 - c. by your actions at 3.a. and b. act dishonestly
3. discuss with AA that you had sex on a night out with another colleague on a date unknown to the SSSC

and your fitness to practise is impaired because of your misconduct as set out in allegations 1.-3.

Representation

5. The SSSC was represented by Shona Ewan, Solicitor (the Presenter).
6. You were represented, in part, by Rebecca Osborne, Advocate (your Representative).

Findings of Fact

7. You had submitted a Personal Statement. The allegations related to service user AA and BB (AA's partner). The Panel heard evidence from two witnesses, AA and CC. The Panel heard from you as to your position in respect of the allegations.

Presenter's submissions

8. The Presenter submitted that the burden of proof was upon the SSSC. In relation to each allegation, the standard of proof was on the balance of probabilities. For each allegation to be proved the Panel would require to find that it was more likely than not that the event (or events) occurred.
9. The witnesses had given evidence in a simple and straightforward manner. The allegations dated back a considerable time. Both witnesses answered questions put to them to the best of their ability, given the passage of time. It was natural that the witnesses may struggle to recollect specific events.

Those difficulties should not detract from the credibility and reliability of the witnesses. There was nothing to suggest that the witnesses were anything other than open and honest.

10. There had been an inconsistency with regard to AA having retracted allegations and having subsequently maintained his original position. This was explained by your behaviour in seeking to influence AA to retract his concerns.
11. CC had spoken to screenshots taken of messages. While there had been some vagueness in his recollection due to the passage of time, this was understandable given the time that had elapsed.
12. Concerning allegations 1.a.-1.d., the Presenter referred to the papers. There were screenshots of the messages which were spoken to by the witnesses. The messages had been sent by you. They had been on BB's telephone. AA spoke to seeing your telephone number and profile picture. CC's evidence was that he saw your profile picture.
13. Further, AA and CC were hearsay witnesses to the messages having been received by BB. The Presenter made reference to case law on hearsay and written submissions. The Panel was entitled to accept and receive as evidence as admissible BB's statement. The SSSC had sought to ensure that BB was a witness. The SSSC did not have a reason why BB had not given evidence. It was accepted that the Panel must give less weight to hearsay evidence than otherwise.
14. AA had co-operated with the SSSC investigation. He was credible and reliable. CC had given evidence that he recognised the messages. CC was credible and reliable. There was no reason to believe that the messages were not genuine.
15. Concerning sexual motivation, the Presenter referred to the case law in the papers and to her written submissions. Given the nature of the messages, for which there was no other suggested explanation, the Panel should find that the behaviour was sexually motivated.
16. Concerning allegations 2.a. and b., AA had given evidence concerning pressure that had been brought to bear on him to retract his concerns. The evidence of AA was consistent with his statement. There had been an inconsistency in the evidence of AA concerning how many times he had been pressurised to retract his concerns. There had been a passage of time and his evidence that it was several times should be accepted. The impact on AA was that he felt sorry for you and was manipulated into retracting the complaint. The effect upon AA was significant and he had lost the ability to trust others. There had been no reason for AA to have made up the allegations. You did not admit the allegations. AA's evidence should be preferred.
17. Concerning allegation 2.c. the Presenter referred to *Ivey v Genting Casinos (UK) Limited* [2017] UKSC 67 at paragraph 74. You knew you were under

investigation. You had been told by your employer not to contact AA. You had known your conduct was dishonest. Your conduct was dishonest.

18. Concerning allegation 3., AA spoke to what had happened and where it had happened. AA spoke to the accuracy of the statements he had provided. There was nothing to suggest that the allegations had been fabricated. You denied the allegation. AA's evidence should be preferred.

Your submissions

19. The Panel noted your Personal Statement.
20. You did not admit allegation 1. and did not recollect the messages.
21. In relation to allegation 2., the allegations were false.
22. In relation to allegation 3., the allegation was false.

Amendment of allegations

23. The Panel was advised that in terms of Rule 17.2. subject to the requirements of a fair hearing the Panel may add to or otherwise amend the allegation at any time before making findings of fact.

Allegations 1.a-1.d.

24. Proved.
25. AA and CC gave evidence of these allegations. The Panel found that AA provided you with BB's telephone number prior to the date of the messages. AA had seen and read the messages on BB's phone. CC had seen the messages and had taken images of the messages. The witnesses identified the messages. At the time AA had noted your mobile number and name and his evidence was that he was certain that the messages were from you. AA had initially retracted concerns in relation to the messages. The Panel found that this was a result of your attempt to persuade AA to retract his concerns while you were under investigation. Subsequently AA had raised concerns concerning the messages. CC had met with BB. CC was in possession of BB's phone and had seen the messages in BB's presence. CC identified your profile picture and the messages of which he had taken images. The Panel found that the messages had been sent such that they were on BB's phone. The Panel heard evidence from AA and CC concerning the messages having been received by BB. The Panel admitted and accepted the evidence of AA and CC that the messages were received by BB. You did not admit the allegations and you were questioned by the Panel. The statements of AA in relation to the allegations in their essentials and CC in relation to the allegations in their essentials were both consistent with their evidence before the Panel. The Panel found AA and CC to have been credible and reliable. The Panel accepted the evidence of AA and CC in relation to these allegations.

Allegation 1.e.

26. Proved subject to amendment by insertion of a dash between "a." and "d." where they appear.
27. The Panel found that the messages were of a sexual nature. The Panel noted the case of *Basson v General Medical Council* [2018] EWHC 505 (Admin) at paragraph 14. The Panel found that by inference your behaviour was sexually motivated. There was no alternative explanation for the motivation behind the behaviour.

Allegation 2.a.

28. Proved.
29. AA gave evidence of this allegation. The Panel found that there had been a relationship of trust between AA and you. You had asked AA to retract his concerns and had set out possible consequences for you if AA's concerns, when your conduct was being investigated, became known. You had sought on several occasions to have AA retract his concerns. This had amounted to placing pressure on AA. The statement of AA in relation to the allegation in its essentials was consistent with AA's evidence before the Panel. You did not admit the allegation and your position was that it was false. You were questioned by the Panel. The Panel could find no credible explanation as to why AA would be untruthful about the allegation. The Panel did not accept that AA was untruthful about the allegation. AA was credible and reliable. The Panel accepted AA's evidence in relation to this allegation.

Allegation 2.b.

30. Proved subject to amendment by deletion of "3.a. and b." and substitution therefor with "2.a.".
31. AA gave evidence of this allegation. You knew you were under investigation. You had been informed that you should not contact AA. You were in a position of trust of which you were aware. You sought to have AA retract concerns about your own conduct. The Panel found that you were asking AA to be dishonest. AA was distressed and had difficulties emotionally with coming to terms with this. AA was vulnerable. AA was credible and reliable. The Panel accepted AA's evidence in relation to this allegation.

Allegation 2.c.

32. Proved subject to amendment by deletion of "3.a. and b." and substitution therefor with "2.a. and b."
33. The Panel noted the case of *Ivey v Genting Casinos (UK) Limited* [2017] UKSC 67 and at paragraph 74. You knew you were under investigation. You had been informed that you should not contact AA. You were in a position of trust of which you were aware. The Panel had to apply the

objective standards of ordinary decent people. You had placed pressure upon a service user to withdraw concerns raised by him. You did not wish the concerns to become known. You sought to have AA retract concerns about your own conduct. The Panel found that by your actions you did act dishonestly.

Allegation 3.

34. Proved.

35. AA gave evidence of this allegation and confirmed the accuracy of his statement, in respect of the allegation. He spoke to what had happened, in particular, the conversation and the location where it happened. You did not admit the allegation and your position was that it was false. You were questioned by the Panel. The Panel could find no credible explanation as to why AA would be untruthful about the allegation. The Panel did not accept that AA was untruthful about the allegation. AA was credible and reliable. The Panel accepted AA's evidence in relation to this allegation.

Impairment

36. You did not admit current impairment on the ground of misconduct.

Presenter's submissions

37. The Presenter submitted that your fitness to practise was impaired because of your misconduct as set out in the allegations.

38. There is no definition of fitness to practise in the Rules nor a statutory definition.

39. With regard to misconduct the Panel was referred to *Roylance v General Medical Council* [2001] 1 AC 31, which provides some meaning for the word as "a word of general effect involving some act or omission which falls short of what would be proper in the circumstances". The Panel was referred to *Mallon v General Medical Council* [2007] CSIH 17.

40. The Presenter submitted that the Panel was assisted by measuring the standard of your behaviour against the standards in the Code. You have failed to comply with Parts 1.1, 1.4, 2.1, 2.2, 2.4, 3.7, 3.8, 5.1, 5.3 and 5.8 of the Code.

41. AA was a service user to whom you provided care and whom you continued to support following his departure from residential care. It was the SSSC's position that your conduct, by sending AA's partner messages of a sexual nature, put AA at risk of emotional harm and abused the trust placed in you as their support worker. By placing pressure on AA to withdraw concerns raised you acted in a dishonest way. The Panel was entitled to conclude that your behaviour was serious. It fell short of what was proper in the circumstances and constituted misconduct.

42. Impairment was a matter for the judgement of the Panel taking into account the facts and the evidence heard. There was no statutory definition of "impairment." The Presenter referred to *Cohen v General Medical Council* [2008] EWHC 581 (Admin) and *Council for Health Regulatory Excellence v Nursing and Midwifery Council and Grant* [2011] EWHC 927.
43. The Panel must take a view of the facts by looking at past conduct, steps taken to remedy behaviour and level of insight. The Panel had to determine whether your fitness to practise was impaired as of today's date.
44. It was the Presenter's submission that your behaviour, by its nature, could not be easily remedied.
45. The Panel had to consider section 6. of the Decisions Guidance which sets out the key purposes of decisions including being to protect the public and to uphold the public interest. The Panel should note the duty to act fairly and that decisions must be proportionate as discussed at section 7. of the Decisions Guidance.
46. The Presenter submitted that your behaviour was at the higher end of the scale in terms of seriousness. There had been a breach of boundaries. AA was a vulnerable service user. He was a young person. [information redacted] Your behaviour had caused AA significant emotional distress. AA had relied on you for support. You had manipulated the friendship between you and him and sought that he retracts his concerns.
47. The behaviours proved were fundamentally incompatible with professional registration. They raised serious concerns about values.
48. The Presenter's position was that you had been [information redacted]. The Presenter accepted that these factors may have contributed to your behaviour in relation to allegation 1.
49. The Presenter referred to *Solicitors Regulation Authority v James; Solicitors Regulation Authority v MacGregor; and Solicitors Regulation Authority v Naylor* [2018] EWHC 3058 (Admin). This supported the proposition that personal issues weighed less in cases of dishonesty. You had been found to be dishonest, which brought this behaviour within section 10. of the Decisions Guidance.
50. There had been no admission in relation to the allegations. You had shown little insight.
51. In the Presenter's submission there was a risk of repetition of the conduct. If the conduct were to be repeated it would place service users at risk of emotional harm.
52. The Presenter submitted that your behaviour had the potential to negatively impact public confidence in the profession. Members of the public would be concerned regarding a Registered Worker behaving in this

manner towards care home residents. Public confidence had to be maintained, and action required to be taken to uphold standards.

53. The Presenter submitted that if no action were taken in respect of your conduct, employers would be able to take assurances about you from you being Registered.
54. The Presenter referred the Panel to section 8. of the Decisions Guidance which sets out factors.
55. The Presenter submitted that there were aggravating factors:
- you had indicated some insight and apology regarding allegation 1.a.- 1.d., however you had not admitted, and had lack of insight in respect of, allegations 2. and 3.;
 - AA was a service user, your employer required to investigate allegations, AA had been pressurised to retract and this related to your professional practice;
 - there had been a pattern of behaviour constituting breaching professional boundaries, rather than an isolated incident;
 - there was significant emotional harm caused to AA;
 - you had been in a position of trust, you had supported AA who trusted you and you used the relationship to make AA feel sympathy for you in the event of you losing your job and family; and
 - you had persuaded AA to retract his statement to conceal wrongdoing from your employer which was an abuse of trust.
56. The Presenter submitted that there were mitigating factors:
- since your Registration with the SSSC there had been no previous history of misconduct;
 - [information redacted]
 - you had been a well-regarded member of your work team;
 - your behaviour took place about nine years ago and there had been some positive practice by you, engaging in sessional work; and
 - you had engaged with and co-operated with the Impairment hearing process.
57. If the Panel wished to depart from the Decisions Guidance it should explain its reason or reasons for doing so in its decision.
58. The Panel should not lose sight of the fundamental standards expected of a registered Worker, public protection, and public interest concerns. A Worker should uphold proper conduct and behaviour to maintain confidence in the profession.
- Your submissions
59. Before the Panel you stated that you regretted the impact upon AA of what had been proved to have happened and you stated you appreciated why, in relation to allegation 2.b., AA had felt as he did. You accepted that the

behaviours were not fitting of how a Worker in the child-care profession should behave.

Panel decision

Reasons

60. Having dealt with the facts as above the Panel dealt with the issue of impairment of fitness to practise as set out in Rules 19. and 2.
61. In your case, the Panel was able to assess your conduct by reference to the Code.
62. The Panel was satisfied that your behaviour with regard to your practice means you have failed to comply with Parts 1.4, 2.1, 2.2, 2.4, 3.7, 3.8, 5.1, 5.3 and 5.8 of the Code.
63. The Panel noted and recognised that breach of the Code does not automatically amount to misconduct, that determination being a matter for the exercise of the judgement of the Panel.

Misconduct

64. The Panel decided that your behaviour did amount to acts falling short of what would be expected in the circumstances and therefore amounted to misconduct.
65. The Panel noted the case of *Council for Health Regulatory Excellence v Nursing and Midwifery Council and Grant* [2011] EWHC 927. The Panel noted that the question to be addressed was whether there is impairment as at the date of the hearing. The Panel noted *Cohen v General Medical Council* [2008] EWHC 581 (Admin). The Panel recognised that to address impairment it required to consider whether the conduct is easily remediable and to identify any steps taken by you to remedy your past conduct. The Panel also needed to form a view on whether the behaviour complained of is likely to be repeated. Further, the Panel had in mind the need to protect the public and the need to declare and uphold proper standards of conduct and behaviour to maintain public confidence in the profession and the SSSC as regulator.
66. The Panel referred to section 10. of the Decisions Guidance, which sets out examples of cases where more serious action may be required.
67. Seriousness - the Panel decided that the allegations were serious and fell into the categories of:
 - paragraph 10.3., because the Panel decided your behaviour in allegation 2.a. amounted to dishonesty;
 - paragraph 10.5., because the Panel decided your behaviour in allegations 1.a.-1.d. and allegation 2.a. amounted to an abuse of a position of trust;

- paragraph 10.6., because the Panel decided your behaviour in allegation 3. amounted to behaviour that is fundamentally incompatible with professional Registration.
68. The Panel referred to section 8. of the Decisions Guidance, which sets out aggravating and mitigating factors.
 69. Insight, regret and apology - the Panel concluded this was an aggravating factor, noting that you had shown limited insight in relation to allegations 1.a.-1.d. and a lack of insight and regret concerning allegations 2. and 3.
 70. Previous history - you have no previous history of referrals to the SSSC, and the Panel decided this was a mitigating factor.
 71. Circumstances leading up to the behaviour – [information redacted] at the material time relating to allegation 1. and the Panel decided this was a mitigating factor.
 72. Length of time since the behaviour and subsequent practice - the Panel decided this factor should be regarded as neutral: you have been suspended and left practice and had not had the opportunity to demonstrate good practice.
 73. Conduct inside or outside of work - the conduct took place in a context related to your professional practice and the Panel concluded that this factor is to be considered as aggravating.
 74. References or testimonials – these related to employment outwith the care sector and the Panel found this to be a neutral factor.
 75. Co-operation with the SSSC - you had co-operated with the SSSC by engaging with the process and this was a mitigating factor.
 76. Isolated incident or pattern of behaviour - the Panel decided that there was a pattern of behaviour by you with regard to the allegations found proved and this was an aggravating factor.
 77. Consequences of behaviour - the Panel noted that your behaviour caused a service user significant emotional upset and caused harm and had the potential for harm, which were aggravating factors.
 78. Abuse of trust - the Panel decided your behaviour in relation to the allegations 1.a.-1.d. and allegation 2.a. amounted to abuse of a position of trust and these were aggravating factors.
 79. Attempt to conceal wrongdoing – your behaviour in relation to allegation 2.a. amounted to an attempt to conceal wrongdoing, and this was an aggravating factor.

Current impairment

80. In coming to a decision as to whether your fitness to practise is currently impaired because of misconduct, the Panel considered the behaviour was not easily remediable. You had limited insight. There was a risk of repetition.
81. The Panel was satisfied if the behaviour was repeated there was a risk of harm to service users and to the public. There were therefore issues of public protection and public interest.
82. The Panel took into consideration the serious nature of the allegations, the impact on the reputation of the profession and your limited insight. It is apparent to the Panel that any reasonable member of the public would have concerns about your behaviour.
83. The Panel requires to balance the public interest in protecting the reputation of the profession and the integrity of the regulator against your interest in being able to practice unrestricted in the profession. The Panel concluded that the need for protection of the public outweighs your interest in this regard.
84. It was the decision of the Panel that your fitness to practise is currently impaired as result of misconduct as shown by these allegations.

Sanction

85. Factors to be taken into account when considering sanction overlap to a degree with those taken into account by the Panel when considering impairment.
86. The Presenter referred to Rule 20., and to paragraph 13.2. and section 8 of the Decisions Guidance.
87. The sanction imposed is not meant to be punitive. It is to be recognised that sanction can cause damage, including financial and reputational. Sanction is available to maintain standards and public confidence. Sanction is to be proportionate to the behaviour. Sanction is to protect the public and to maintain confidence in the social services profession.
88. It was submitted by the Presenter that it is to be recognised that sanction can cause damage, including financial and reputational. The proportionality requirement meant that the Panel required to weigh your interests with the harm caused and the risk that the behaviour presents.
89. The Presenter submitted that it was not appropriate to take no further action as that would require there to be exceptional circumstances and there were none here.
90. It was stated to the Panel that a warning on its own was not appropriate. The SSSC did not consider the behaviour to be at the lower end of the scale of seriousness; a warning would not sufficiently address the seriousness of the behaviour; nor adequately safeguard the public interest.

91. The Presenter submitted that conditions, with or without a warning, were not appropriate. The behaviour had involved dishonesty and a breach of trust. There was limited insight. Conditions were not applicable, and conditions could not be imposed so as to address the public interest concerns.
92. It was submitted to the Panel that a Suspension Order, with or without conditions, was not appropriate. There had been significant impact on a vulnerable service user. A Suspension Order would not adequately manage the risk which was posed to vulnerable members of the public.
93. The Presenter submitted that a Removal Order was the only appropriate sanction. The other orders did not adequately address the public interest concerns.
94. You were questioned by the Panel. Your position was that you had shown insight.

Panel Decision

95. The Panel decided to impose a Removal Order.

Reasons

96. In reaching its decision, the Panel took into account the findings in fact, decision on impairment, the evidence presented, the papers, your representations at the hearing and the submissions of the Presenter. The Panel also noted and took into account the Rules and the Decisions Guidance, in particular sections 13. and 15.
97. The Panel paid regard to the seriousness of the impairment of your fitness to practise, the protection of the public, the public interest in maintaining confidence in social services and the issue of proportionality. It considered the aggravating and mitigating factors and each of the possible disposals in turn.
98. The Panel required to start by considering the least restrictive outcome first and work upwards until it reached the least restrictive decision which addressed adequately your behaviour.
99. The Panel decided that to impose no sanction would not be appropriate as there were no exceptional circumstances in this case to justify a decision of no further action.
100. A warning would not be appropriate as it would not adequately address the impairment of your fitness to practise. The behaviour is serious and a warning would not give adequate protection to service users or the public.
101. Conditions, with or without a warning, were not appropriate. You had shown limited insight. The allegations proved included allegations of abuse of a position of trust and dishonesty. A vulnerable service user had been affected and there was a risk of future harm.

102. The Panel considered that a Suspension Order, with or without conditions, is not appropriate given the seriousness of your conduct. The Panel further considered that the allegations which had been proved were such that there were underlying issues connected with your values. A Suspension Order would not adequately manage the risks arising from the behaviour.
103. Removal is the most serious sanction. Social service workers who abuse the trust placed in them should lose the privilege which comes with Registration as such. It was the view of the Panel that your behaviour renders you unfit to be a member of a caring and responsible profession. It was the view of the Panel that your misconduct is fundamentally incompatible with Registration. Given the serious nature of the behaviour and your limited insight the Panel decided to impose a Removal Order in relation to your Registration.
104. The Panel acknowledged that a Removal Order can have consequences, reputational and otherwise, for a Worker. The Panel was of the view that such consequences for you are outweighed by the need to protect members of the public, to serve the wider public interest, to protect the integrity of the regulator and the reputation of the SSSC as a regulator. It was fair and proportionate to impose a Removal Order.