

Notice of Decision

Registrant	Ken Merchant
Registration number	3033094
Part of Register	Support Workers in a Housing Support Service, Support Workers in Care at Home Service and Support Workers in a Care Home Service for Adults
Town of employment	Millport
Sanction	Removal
Date of effect	3 July 2021

This is notice of a decision of the Scottish Social Services Council (SSSC).

Our decision

We decided:

1. that based on the facts found your fitness to practise is impaired, as defined in Rule 2 of Part 1 of the Scottish Social Services Council (Fitness to Practise) Rules 2016 (the Rules) as amended
2. to make a Removal Order removing your registration from the part of the SSSC Register for Support Workers in a Housing Support Service.

Findings of fact

We decided that there is evidence that:

1. on 22 December 2020, at Kilmarnock Sheriff Court, you were convicted of an offence, namely that:
 - a. on 29 December 2019 at Larges Pier Office, Promenade, Largs, you did assault AA, a person in your care, and you did:
 - i. repeatedly slap AA on the head
 - ii. strike AA on the body with your elbow
 - iii. strike AA on the body with your arm
 - iv. repeatedly strike AA on the head with your hand
 - v. punch AA on the head
 - vi. repeatedly strike AA on the head with your elbow
 - vii. seize AA on the body

- viii. restrain AA
- ix. sit on top of AA

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

Reasons for the finding that your fitness to practise has been impaired

1. Your fitness to practise is impaired because:

- a. social service workers are trusted to care for the most vulnerable members of society. They are expected to protect service users in their care, insofar as possible, from abuse and harm. They must not put others at unnecessary risk or behave, while in or outside of work in a way which would bring their suitability to work in social services into question. They must respect and maintain the dignity of service users and work in a lawful, safe and effective way. You were convicted of assaulting a service user in your care, in that you did repeatedly slap him on the head, strike him on the body with your elbow, strike him on the body with your arm, repeatedly strike him on the head with your hand, punch him on the head, repeatedly strike him on the head with your elbow, seize him on the body, restrain him and sit on top of him. Being convicted of a crime of violence calls into question your suitability to work as a social service worker as it demonstrates you are willing to place others at risk of harm. Your actions had the potential to cause significant physical and emotional harm to AA and emotional harm to those who witnessed your behaviour. Your actions were an abuse of trust placed in you by the service user, their family, and the public generally. Your conviction demonstrates a serious contempt for the dignity and safety of service users in your care and are not reflective of a caring and responsible professional.
- b. your conviction of assault concerns behaviour that is considered abusive, aggressive and falls far below the standard expected of a caring professional and is fundamentally incompatible with that of a caring professional and professional registration. The behaviour was prolonged and demonstrates a clear lack of compassionate practise for the service users in your care and indicative of significant attitudinal and values issues, therefore the behaviour is harder to remediate. You have minimised and, in part, denied the behaviour for which you were convicted. We cannot be assured that there is

no risk of repetition. There is an ongoing risk to public protection and a reasonable person in possession of all the information would consider the reputation of the profession to be damaged if you were to remain able to practise without restriction.

2. You have failed to follow parts 1.3, 1.4, 3.10, 5.1, 5.3, 5.7, 5.8 and 6.1 of the SSSC Code of Practice for Social Service Workers.

Sanction

After referring to our Decisions Guidance, we decided to make a Removal Order, removing your registration from the SSSC Register.

Reasons for the sanction

When making our decision we considered the following factors:

Factors of concern

- Circumstances leading up to the behaviour – you submit that you were subjected to particularly challenging behaviour by the service user in your case. You lost your patience and acted in the manner described in the allegation. As such, there is an element of spontaneity in the behaviour. However, you are a very experienced worker and there is a substantial disregard for the SSSC Codes of Practice shown in your behaviour. Given the nature of your role, it is not considered that the circumstances were such that they may not reoccur.
- Conduct inside work – the offence took place in public setting, however this was during working time when on an organised trip with a service user. It is considered an aggravating factor due to the substantially serious nature of the behaviour.
- Consequences of behaviour – while no actual physical harm was noted in relation to the service user, there was a real risk of significant physical and emotional harm to him. There was also the risk of emotional harm to members of the public.
- Abuse of trust - the abusive nature of the offence amounts to a fundamental failure to follow the Codes. The service user was entrusted to your case and is considered highly vulnerable.

Factors in your favour

- Previous history – you were registered in your role for about five and a half years prior to this offence and did not come to the attention of the SSSC during this time.
- Co-operation with the SSSC – you have provided full and considered comments to the allegation and have participated in prior hearings relating to your fitness to practise. You have kept in regular contact with the SSSC during the investigation.

Reasons why other sanctions are not appropriate

- A warning would not be appropriate as the behaviour is considered extremely serious and at the higher end of the scale of impairment. You have shown limited insight into your behaviour. This is not an instance where a warning would be sufficient in marking the seriousness of the behaviour nor would a warning assist in minimizing public protection risks.
- A condition would not be appropriate because you have shown limited insight. Given the abusive nature of the behaviour, this is considered harder to remediate. This is not a type of behaviour for which conditions may be appropriate. People who use services would be put at risk and conditions that would adequately address the public protection risks and the public interest cannot be conceived.
- A warning plus conditions would not be appropriate due to the reasons outlined above.
- A suspension order would not be appropriate because the behaviour is at the higher end of the scale of seriousness, involving an offence of violence against a service user in your care. The public protection risks and public interest are such that they are significantly serious and surpass the level whereby a suspension is considered appropriate. You have not shown a significant and developed sense of insight and appear to seek to minimise your actions and shift blame to others.
- For the reasons outlined above a suspension order plus conditions would not be appropriate.
- The SSSC considers that a Removal Order is the most appropriate sanction as it is both necessary and justified in the public interest and to maintain the continuing trust and confidence in the social service profession and the SSSC as the regulator of the profession.

Documents we have referred to

- The Regulation of Care (Scotland) Act 2001.
- Scottish Social Services Council (Fitness to Practise) Rules 2016 (the Rules) as amended.
- Decisions Guidance for Fitness to Practise Panels and Scottish Social Service Council staff.

Acceptance of the Removal Order

Having been advised of the consequences, and recommended to take legal advice, you admitted the facts and that your fitness to practise is impaired and accepted the Removal Order on 7 June 2021.

Date of effect

The notice comes into effect on 3 July 2021.