

**Outcome of Fitness to Practise Panel impairment hearing held on
Monday 20 May, Monday 8 July, Monday 26, Tuesday 27, Wednesday 28,
Thursday 29 and Friday 30 August 2019**

Name	Elizabeth Campbell
Registration number	3007136
Part of Register	Practitioners in a Care Home Service for Adults
Current or most recent town of employment	Fraserburgh
Sanction	Warning to stay on your registration for a period of two years and condition imposed
Date of effect	21 September 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 Monday 20 May, Monday 8 July, Monday 26, Tuesday 27, Wednesday 28, Thursday 29 and Friday 30 August 2019 at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

At the hearing, the Panel decided that the allegations against you (as amended) were proved, that your fitness to practise is impaired, and to impose a warning for a period of two years and a condition on your Registration in the part of the Register for Practitioners in a Care Home Service for Adults in terms of Rule 20.2.d of the Scottish Social Services Council (Fitness to Practise) Rules 2016 as amended by the Scottish Social Services Council (Fitness to Practise) (Amendment) Rules 2017 (the Rules).

The condition the Panel decided to impose was:

1. Within three months of the date on which the condition comes into effect, you must submit a written reflective account to the SSSC, the content of which must be to the reasonable satisfaction of the SSSC. Your reflective account must specifically address:

- a. your reflection on the Panel's findings of fact and finding of impairment in relation to the incidents which occurred and the impact upon people who use services and colleagues
 - b. your understanding of how your behaviour breached the Codes of Practice for Social Service Workers
 - c. any lessons you have learnt and how this will impact on your future practice
 - d. how your role as a social service worker impacts on the people who use services you work within, their families, your colleagues and the wider public.
2. At least every six weeks for a period of two years from the date on which the condition comes into effect, you must:
 - a. participate in supervision with your line manager including focus on your current practice in terms of the standards expected under the Codes, your training and personal development, your relationships with colleagues, how you communicate in the workplace and how you interact with people who use services verbally and physically so as to respect and maintain their dignity and treat them as individuals
 - b. provide the SSSC with evidence of your supervision by submitting copies of your supervision record signed by you and your line manager, within two weeks of the supervision session taking place.
3. You must:
 - a. prior to accepting any offer of new employment, including agency work, inform any prospective social services employer or agency of the terms of the condition listed at 2. above
 - b. within two weeks of commencing a new role in social services you must submit evidence to the SSSC, endorsed by your employer or agency, of their awareness of the condition listed at 2. above.
4. You must immediately notify the SSSC of any change in your employment circumstances, including:
 - a. details of any post within social services that you accept, immediately upon accepting the post and before starting in post
 - b. if any formal disciplinary proceedings against you are started by your employer, full details of the proceedings, within seven days of being formally notified of such proceedings.

Allegations

The allegations against you at the hearing were that between on or around 1 November 2015 and 21 October 2017, while employed as a Social Care Officer by Aberdeenshire Council at [care service redacted], and during the course of that employment, you did:

1. on or around 20 June 2016, state to resident AA “get into your fucking bed you evil witch” or words to that effect
2. on or around 5 March 2016, in relation to resident BB:
 - a. roughly push resident BB in the back
 - b. grab and pull BB’s zimmer
 - c. state to BB “go on then, just fall” or words to that effect
 - d. undertake a controlled fall with BB when there was no need to do so
 - e. state to BB when she was on the floor “I am going to leave you there, you are faking, you can manage to stand yourself” or words to that effect
 - f. fail to record in the Daily Contact Records or in an Incident Report Form that an incident had occurred with BB namely, that there had been a controlled fall or BB had placed herself on the floor
3. in or about May 2016 in relation to resident CC:
 - a. repeatedly roughly push CC in the back when she was attempting to leave the care home
 - b. fail to record in the Daily Contact Records or an Incident Report Form that CC had attempted to leave the care home and slapped you in the face
4. on a separate occasion, on an exact date unknown to the SSSC between on or around 4 May 2016 and on or around 28 May 2016, in relation to CC, roughly push CC in the back when she was attempting to leave the care home
5. on an exact unknown to the SSSC between on or around 2 May 2016 and on or around 20 May 2016, in relation to resident DD:
 - a. force DD to sit on a commode
 - b. when DD refused to stand from the commode, tilt the commode to force DD to stand up
6. between in or around November 2015 and in or around December 2015, make a racially offensive remark within the staff room in the presence of the Care Home Manager, namely use the word, “Chinkie” to describe a Chinese person

7. in or around January 2016, within the lounge area of [care service redacted], state to your colleague XX, "Don't make a c**t of it" or words to that effect in the presence of residents including resident EE
8. on or around 21 October 2017:
 - a. hit your right shoulder off of XX's right shoulder as you were passing XX at a local Tesco store
 - b. by your actions at allegation 8a cause XX to feel intimidated

and in light of the above your fitness to practise is impaired because of your misconduct as set out in allegations 1-8.

Matters taken into account

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

- the Rules
- the Act
- the Codes of Practice for Social Service Workers in force prior to and from 1 November 2016 (the Codes)
- the Decisions Guidance for Fitness to Practise Panels and SSSC staff revised December 2017 (the Decisions Guidance).

Findings of fact

Your Representative advised that you admitted the facts alleged at allegations 2.f and 6.

Background

You are registered in the part of the Register for Practitioners in a Care Home Service for Adults. You first applied for Registration with the SSSC in this part of the Register by application form signed on 11 October 2012. You were originally registered by the SSSC in this part of the Register on 15 December 2012.

You are qualified with SVQ Levels 2 and 3 in Health and Social Care (Adults) awarded in 2008 and 2011 respectively.

You commenced employment with Aberdeenshire Council as a Social Care Officer in February 2009. You worked at [care service redacted] (the Home) in that role until October 2017.

AA was a female resident in the Home. She was born in 1924. She moved into the Home in August 2015. She had been diagnosed as having Dementia.

BB was a female resident in the Home. She was born in 1934. She moved into the Home in January 2015. She had no formal diagnosis of any cognitive

impairment. BB would use a Zimmer when walking and could walk independently with her Zimmer.

CC was a female resident in the Home. She was born in 1932. She moved into the Home in March 2012. She had been diagnosed as having Dementia. CC would frequently try to leave the Home without telling anybody.

DD was a female resident in the Home. She was born in 1933. She moved into the Home in 2009. She had been diagnosed as having Dementia.

EE was a female resident in the Home.

SSSC's evidence

The SSSC called three witnesses to give oral testimony.

ZZ

ZZ gave evidence in person on days one and two of the hearing. ZZ works as a medical receptionist. She took up this position on 4 February 2019. She is not presently registered with the SSSC, although she has been in the past. Prior to taking up this position ZZ worked in various roles, including a period spent working as a care assistant at the Home.

ZZ gave evidence about matters she witnessed in relation to residents BB, CC and DD. ZZ spoke to a number of documents, including the witness statement she gave to Aberdeenshire Council on 4 August 2016 (F83); notes of interviews she had with Aberdeenshire Council on 29 June and 1 July 2016 (F101 and F97); and her SSSC witness statements signed on 26 October 2016 and 10 March 2019 (F543 and F617).

YY

YY gave evidence in person on day two of the hearing. She is registered with the SSSC. She is currently a Social Work lecturer and academic at [information redacted]. She took up this post in September 2018. Prior to this, YY worked as Care Home Manager at the Home, employed by Aberdeenshire Council, between October 2015 and August 2018.

YY gave evidence about matters she witnessed and matters which were reported to her in relation to residents AA, BB, CC and DD. YY spoke to a number of documents, including notes of interviews she had with XX on 29 June 2016 (F93), you on 29 June 2016 (F95) and ZZ on 29 June and 1 July 2016 (F101 and F97); and her SSSC witness statements signed on 8 December 2016 and 23 July 2018 (F557 and F563).

XX

XX gave evidence in person on day three of the hearing. She is registered with the SSSC. She is currently employed by Aberdeenshire Council as a Care Assistant at the Home. She has worked at the Home since November 2014.

XX gave evidence about matters she witnessed in relation to residents AA, CC and EE, and an incident when your paths crossed at a local Tesco store. XX spoke to a number of documents, including the witness statement she gave to Aberdeenshire Council on 19 July 2016 (F73); notes of an interview she had with Aberdeenshire Council on 29 June 2016 (F93); her SSSC witness statements signed on 7 October 2016 and 6 July 2018 (F549 and F561); and a letter she wrote to the SSSC dated 7 December 2017 (F599).

Your evidence

You

You gave evidence in person. You are currently employed as a care assistant at a sheltered housing complex in Fraserburgh. You took up this post in July 2018. Before this you worked at the Home for around eight and a half years. Prior to that you worked as a home carer for 18 years.

You gave evidence about each of the allegations in the Initial Notice of Referral. You spoke to a number of documents, including the witness statement you gave to Aberdeenshire Council on 19 July 2016 (F51); notes of an interview you had with Aberdeenshire Council on 29 June 2016 (F95); and the SSSC Personal Statement Form you completed (F605).

SSSC's closing submissions

In her closing submissions, the Presenter submitted that the Panel could consider the other documentary evidence in terms of Rule 32.4.

The Presenter referred to Rules 32.11 and 32.12 on the burden and standard of proof that applied.

In relation to the witnesses who gave oral evidence, the Presenter submitted that:

ZZ

ZZ gave her evidence in an open and honest manner. Her oral evidence was largely consistent with statements she had made to her employer and to the SSSC. She was balanced in her answers. She was clear that you were pulling BB and undertook a controlled fall when this was not necessary or appropriate because BB was not falling. In relation to CC, she was clear about you pushing CC and that you were slapped. You were not guiding CC, but were instead giving a forceful push each time CC stopped. She was clear that you forced and did not guide DD in using the commode. ZZ was not registered with the SSSC, and so had attended the hearing of her own volition. She was straightforward and unwavering in her account. The Panel should find her credible and reliable.

YY

YY gave evidence in a clear, open and honest manner. Her oral evidence was largely consistent with her statements to the SSSC. She had a balanced view of the allegations as former Manager. XX came to speak to her about AA. XX was very upset. You initially denied what XX had reported about AA, but then after some reflection you told her you had said something about AA's nails. YY had no reason to disbelieve XX and ZZ. Both witnesses were consistent and detailed with their accounts. In relation to CC, YY would expect a slap to be recorded. In relation to DD, you were trained to assist, not use force. Any trained carer should know the difference between guiding and forcing. YY had no personal issue with you. The Panel should find her credible and reliable.

XX

In relation to XX, she gave oral evidence in a clear and open manner. She worked well with you but was not friends with you. She felt intimidated by you. She felt she was a voice for vulnerable people with dementia. She was mostly clear and concise. Where inconsistencies were found, these were spoken to in an open manner. She found you verbally aggressive. She felt ill about what she saw and heard. In relation to AA, she acknowledged she should have been braver and reported matters sooner. She gave her evidence in a measured way about what she saw and heard. The Panel should find her credible and reliable.

Overall, the Presenter submitted that the SSSC witnesses gave evidence in a simple and straightforward manner. Concessions were made where appropriate. Accounts were broadly consistent with prior statements. Although witnesses were taken to statements to refresh their memories, this was understandable given the passage of time. There was no basis for making the allegation that there was an agenda against you to taint evidence. The witnesses gave evidence largely unprompted and in a balanced way. The Panel should find the SSSC's witnesses wholly credible and reliable.

Taking each of the allegations in turn, the Presenter submitted that the allegations were supported by the following evidence, namely:

Allegation 1

XX's oral evidence and documents including F47, F51-F65, F73-F80, F93, F95, F549-F551, F555-F556 and F557-F559.

Allegation 2

ZZ's oral evidence and additional oral evidence of YY, and documents including F51-65, F81-F92, F97-F98, F101-F102, F543-F548, F555-F556, F557-F559 and F617-F618.

Allegation 3

ZZ's oral evidence and additional oral evidence of YY, and the documents referred to above under allegation 2.

Allegation 4

XX's oral evidence and documents including F549-F551.

Allegation 5

ZZ's witness evidence and additional oral evidence of YY, and documents including F51-F65, F81-F92, F97-F98, F101-F102, F543-F548 and F569-F570.

Allegation 6

YY's oral evidence. Further, you admitted the facts alleged.

Allegation 7

XX's oral evidence and documents including F549-F551.

Allegation 8

XX's oral evidence and documents including F561-F562 and F599.

In concluding, the Presenter submitted that, on the balance of probabilities, there was sufficient evidence for these allegations.

Your closing submissions

In her closing submissions, your Representative addressed each of the allegations. She submitted that:

Allegation 1

There was one witness to this allegation. Your position was that you never said this. You were very clear about that, both in documentary evidence and during oral evidence. It was appreciated that there were some inconsistencies in your explanations about this. Your first meeting with YY was recorded and you were asked to sign the note of that meeting. At your initial investigation meeting with your Trade Union representative, it was stated that you signed under duress. This was hyperbole on the part of your Trade Union representative. You had signed the note without thinking when your Manager asked you to sign. You had wracked your brain and tried to give a reason why someone would accuse you of saying something horrible to AA. You explained there had been a discussion with staff. No claim was made that XX had been inconsistent about whether AA was in bed or not. It was possible that she was in bed and being looked after by you. You didn't deny that you had a memory of doing personal care and putting AA to bed. When XX was pressed in evidence about how she knew what you had said and whether it was possible she was mistaken, XX had one story and was sticking to it. She was not willing to consider other explanations. This was the behaviour and response of someone who had made something up a long time ago and because it wasn't true couldn't remember details about it. XX was no doubt panicking during her evidence that she was saying the same thing as she had done over the last three years.

The Panel was in an unenviable position. It was a serious allegation. The Panel had to decide matters on a "she said/she said" basis. The Panel needed to decide whose evidence it preferred and who it found more credible and reliable.

The Panel should have regard to the general credibility and reliability of your evidence. You had given an immediate response to the SSSC and had a consistent position. You had provided explanations as to why you might have said something about being witch like. Some explanations might not be consistent, but you had been trying to wrack your brain on where this allegation had come from. In relation to XX, her evidence was tainted by her dislike for you. There was defensiveness in how she approached her evidence. Her body language was very defensive and she was defensive under cross-examination. There were times she just refused to answer questions. When asked to entertain other possibilities, she was not willing to do that. She was unreasonably wedded to her point of view. The Panel should prefer your evidence that this did not happen.

Allegation 2

The sole witness was ZZ. She shot her credibility pretty quickly when she arrived and made a vulnerable witness application. Her credibility was further shot when she left in the middle of her evidence. This was to evade cross-examination. You believed she only came to give evidence because she had plans to re-register with the SSSC and she could have difficulties doing so if she did not attend the hearing for cross-examination.

During her evidence, ZZ went back on her position about you roughly pushing BB in the back. She didn't give much clear evidence about the grabbing and pulling of BB's Zimmer. She did address you saying, "go on and just fall". She insisted there was a controlled fall when there was no need to do one. She did not entertain the possibility that there was a need to do a controlled fall. She stuck to her story for the most part, but she did clarify that it was the correct manoeuvre but it was the force it was done with. In relation to what was said to BB, that testimony was not credible or reliable and was tainted by ZZ's position that you were a bully towards her.

The key to understanding this allegation, and the allegations in relation to CC and DD, could be found at F101, the notes of the meeting with ZZ on 29 June 2016. ZZ's immediate response to what was a fishing expedition was exaggerated. There was a clear attempt, whether intentional or not, to link BB having a bruise, due to bone cancer in her arm, with something you had done. Both ZZ and XX believed that you were a bully. YY gave them the chance to provide information in relation to allegations. They attempted to use the vulnerabilities of service users who couldn't be asked in order to achieve this. ZZ and XX were both very candid about how they came to talk to each other about allegations. XX made the allegation about AA. She told YY and said to her she should speak to others, including ZZ, who had concerns about you. When pressed on this, XX denied ever having discussed any issues about you. She denied ever saying to YY that ZZ had issues. When it was put to her that other witnesses had said that was the case, she kept to her intransigent position. XX was no doubt very nervous and denying everything put to her as a matter of course, but this was a very serious thing to get wrong. It did not add

credibility to her position. It was an outright lie. It tainted every single other part of her evidence.

Allegation 3

It was clear from the care plans that CC frequently tried to run out of the building. It was recorded in her care plan that she had poor hearing and often misplaced hearing aids. ZZ was the sole witness. She said she was trying to get CC back into the building. You came to assist. You were pushing CC too roughly in the back, then you failed to record the slap. YY also recollected being told about this allegation. She seemed to have that wrong in her evidence when she said that you were pulling CC into the building, but ZZ said you were pushing CC.

Your evidence was that CC was a fit woman and was genuinely in danger trying to jump over the dyke where there was a main road. CC was immune to verbal attempts to get her back into the Home as she couldn't hear. You were firm in guiding her back in. You then de-escalated the situation, pointing to CC's ear and explaining it was because she didn't have hearing aids.

ZZ couldn't really describe what she meant by you being too rough, beyond you know it when you see it. There was no real measurement of pushing that witnesses could usefully point to. This was an issue of credibility and reliability, and motivation. ZZ had been asked by her Manager to tell her about things of concern. ZZ exaggerated her account on this matter. She was perhaps feeling miffed that she'd been unable to deal with CC and you came to the rescue, particularly because it was clear she has a personal dislike of you.

ZZ's first account at F101 stated that you kept pushing CC to the front of the body until CC slapped you. This was totally inconsistent. It then became that you were pushing CC from the back. YY remembered it as pulling. ZZ's evidence was different. You had no recollection of being slapped in the face. You had never been slapped in the face. If you had been, it would have been the talk of the workplace. There were other issues about ZZ's credibility and reliability relevant to whose evidence the Panel should prefer.

Allegation 4

XX was the sole witness. In oral evidence, she thought this occurred in early 2016. She was confident it took place before events involving AA but couldn't really say. It was put to her that this was very similar to what ZZ was saying about CC. Other than seeing you and CC in a corridor with CC being walked along, XX couldn't particularly remember any more details. There was reference to CC's body being behind her legs, or the opposite way round, as if CC was being rushed.

You gave an account of how you used moving and handling training and techniques. No-one was really sure where this allegation came from and what event it referred to, or that XX remembered it. This was another "she said/she said" allegation. The Panel had to decide who it found more credible. You were

not unreasonably wedded to any position. You were willing to consider alternatives. When it was put to XX that her evidence was similar to allegations by ZZ, XX was not willing to consider that. That said, it was acknowledged that XX might not have been following what she was being asked about.

There was not enough evidence to find this allegation proven, even before one turned to consider your evidence. If the Panel did get that far, you were far more credible and reliable in your account. You were not motivated by a personal animus.

Allegation 5

The genesis of this allegation was again the document at F101. ZZ was clear in her oral evidence in chief that you placed your hand on DD's hip and pushed her down. ZZ's issue was not whether it was the correct manoeuvre or not, with reference to manual handling techniques, rather it was too forceful. There was no objective measurement for that. It was ZZ's opinion that you were too forceful. Her evidence was then contradictory. It shifted to a concern that it wasn't necessary for DD to be guided down onto the commode.

ZZ's evidence was even more bizarre, in particular, that if a resident was urinating over themselves, they should be left to do that. You were clear about your training and for the sake of DD's dignity it was incumbent on you to use your training to guide DD onto the commode, and for health and safety reasons. Anybody could have slipped.

In relation to the tilt of the commode alleged, your evidence was clear that you didn't do it. It was a very undignified way to encourage someone to stand up. Further, it created a risk of spilling urine onto the floor.

This was another "she said/she said" allegation. The Panel had to decide whose evidence it preferred in general and whose evidence it found more credible and reliable.

Allegation 7

XX's oral evidence was very clear. She was asking directly about to whom the words were said and she stated it was directed to EE. The SSSC was aware they could not prove this allegation unless the allegation was changed dramatically to mean something completely different to be retrofitted to suit the best, oral evidence of XX.

You were clear that you did not say this. You don't swear in front of residents. You don't use the word alleged. You do admit when you say the wrong thing, for example using a racially offensive word. You would admit to using a swear word if you had used it. The Panel should believe your account over XX's account. XX was motivated by an intense personal dislike of you. XX felt you were a bully, but when pressed she couldn't particularly explain what she meant. She was not bullied herself, but she thought ZZ was, yet she didn't discuss matters with ZZ. XX's evidence was all over the place. The Panel should prefer your account.

Allegation 8

This was another “she said/she said” allegation and it came down to whose evidence the Panel would prefer. Submissions had already been made about the credibility and reliability of XX. You recalled this incident. You’d sent your husband to load the car with shopping so you could speak with a friend you’d bumped into at Tesco. As you were walking out of the store, you realised that you’d just brushed passed XX. You recalled saying to your husband that you’d seen XX and joked with your husband that that would be another allegation soon. That is what then happened. XX felt assaulted. She told the Police about the incident when they were at her house months later about another matter. XX couldn’t give a clear reason why she didn’t inform the Police at the time. Your account was less dramatic and was the true account. The Panel should prefer your evidence.

In concluding, your Representative submitted that, in relation to YY, she was not an eye witness. Her position and role informed how we all came to be here. She was a very articulate woman. Your position was that her evidence was extremely hyperbolic, for example referring to instances of historic abuse and uncovering these examples. It was very clear her evidence was prone to exaggeration. At times she was a bit too gleeful to be discussing allegations which could affect someone’s livelihood. She had a lot of views and opinions with little substance. She was unreasonably wedded to her view that ZZ and XX were telling the truth.

Your Representative submitted that the Panel should consider in general the references in the papers. The authors of those references were aware of the allegations you were facing. Several of the referees were former employees of the Home who worked under YY. YY tended to create an us and them culture. YY was on a fishing expedition to find more allegations. The Panel should take a cynical view towards her hyperbole. Some of her language was highly inappropriate. She had no previous experience of management. She mentioned having support from her seniors, but no examples were given. She was not an eye witness. We were all here because of an investigation she had begun.

Findings of fact

The Panel reminded itself that the burden of proof rested upon the SSSC, and that the SSSC required to prove the facts in dispute on the balance of probabilities.

The Panel found that the following facts had been proved by admission:

1. Between in or around November 2015 and in or around December 2015, you made a racially offensive remark within the staff room in the presence of the Care Home Manager, namely use the word, “Chinkie” to describe a Chinese person.

2. On or around 5 March 2016, in relation to resident BB, you failed to record in the Daily Contact Records or in an Incident Report Form that an incident had occurred with BB, namely that there had been a controlled fall or BB had placed herself on the floor.

The Panel found that the following facts had been proved on the balance of probabilities:

3. In or around January 2016, within the lounge area of the Home, you stated "Don't make a c**t of it" or words to that effect in the presence of residents including resident EE.
4. On or around 5 March 2016, in relation to resident BB, you:
 - a. roughly pushed resident BB in the back
 - b. grabbed and pulled BB's Zimmer
 - c. stated to BB "go on then, just fall" or words to that effect
 - d. undertook a controlled fall with BB when there was no need to do so
 - e. stated to BB when she was on the floor "I am going to leave you there, you are faking, you can manage to stand yourself" or words to that effect.
5. In or about May 2016, in relation to resident CC, you:
 - a. repeatedly roughly pushed CC in the back when she was attempting to leave the care Home
 - b. failed to record in the Daily Contact Records or an Incident Report Form that CC had attempted to leave the care Home and had slapped you in the face.
6. On a separate occasion from that referred to in finding of fact 5.a, on an exact date unknown to the SSSC between on or around 4 May 2016 and on or around 28 May 2016, in relation to CC, you roughly pushed CC in the back when she was attempting to leave the care Home.
7. On an exact date unknown to the SSSC between on or around 2 May 2016 and on or around 20 May 2016, in relation to resident DD, you:
 - a. forced DD to sit on a commode
 - b. when DD refused to stand from the commode, tilted the commode to force DD to stand up.
8. On or around 20 June 2016, you stated to resident AA "get into your fucking bed you evil witch" or words to that effect.
9. On or around 21 October 2017 you:

- a. hit your right shoulder off of XX's right shoulder as you were passing XX at a local Tesco store
- b. by your actions at finding of fact 9.a you caused XX to feel intimidated.

Reasons

In relation to the witnesses who attended the hearing to give oral evidence, the Panel considered that each of the SSSC's witnesses was broadly credible and reliable. Where there were differing accounts of events between you and each of the SSSC's witnesses, in relation to the material facts in dispute, the Panel generally preferred and accepted the evidence of the SSSC's witnesses.

The Panel considered carefully the evidence and submissions on possible motivations for witnesses to fabricate or exaggerate their evidence. In relation to the evidence heard about bullying and people feeling intimidated by you, the Panel considered that ZZ and XX were genuine when describing how they felt when working alongside you. The Panel did not consider that these witnesses were motivated to fabricate or exaggerate their evidence by reason of their previous relations and encounters with you, or because they were being encouraged to do so by YY or anyone else.

The Panel recognised that there were some inconsistencies and varying levels of detail in the oral evidence of the SSSC's witnesses and statements they had previously made to Aberdeenshire Council and to the SSSC and, on occasion, between witness accounts, including the issue of whether XX had discussed concerns about you with ZZ. The Panel did not consider that this rendered any of the witness's evidence wholly unreliable to the extent that their entire evidence fell to be disregarded. The Panel was mindful, including when considering your evidence, that the allegations had occurred several years ago.

In relation to each of the witnesses who gave evidence, the Panel considered that:

- ZZ was a generally credible and reliable witness. She gave her evidence in a straightforward manner and with a descriptive level of detail which painted a picture of the matters about which she gave evidence. Whilst it appeared to the Panel that ZZ would rather not be in attendance at the hearing as a witness, and she had indeed expressed reluctance to return to the hearing to be cross-examined and complete her evidence, the Panel did not consider that this was because she was fabricating or embellishing her evidence. The Panel did not consider that the fact the SSSC had made an application to have ZZ treated as a vulnerable witness meant that ZZ's credibility was undermined.
- YY was a generally credible and reliable witness. She was articulate and considered in her oral evidence. That said, her evidence was limited in that it mostly comprised hearsay evidence of what others, including ZZ and XX,

had reported to her. The Panel did not consider that she was fishing for allegations against you. Rather, she was acting on and taking appropriate steps to deal with concerns raised with her as the Manager of the Home.

- XX was a generally credible and reliable witness. She gave her evidence in a straightforward manner. At times, she appeared tense. The Panel did not consider that this was because she was making up or exaggerating her evidence. She was, at times, defensive under cross-examination, which the Panel considered was because she was, for the most part, clear and consistent in what she had seen and heard.
- In relation to you, the Panel had reservations about the credibility and reliability of aspects of your evidence. Whilst consistent in your denials of the allegations that were in dispute, there were inconsistencies in explanations which had been given over time which the Panel did not consider could be put down as being simply due to the passage of time since the incidents were alleged to have occurred. The Panel considered that some of your explanations were exaggerated and did not ring true.

In relation to proof of the allegations that were in dispute:

Allegation 1

The Panel preferred and accepted XX's evidence on this incident. She gave a clear account of events on 20 June 2016 as you were both putting AA to bed, including that you said to AA "get into your fucking bed you evil witch". XX's oral testimony was consistent with the accounts she gave to her employer on 29 June 2016 and 19 July 2016 and her SSSC witness statement signed on 7 October 2016. The Panel did not consider that XX had fabricated her evidence on this incident. In contrast, you had given varying accounts and explanations in denial over time which were materially different. For example, during your oral testimony you spoke about the fact that there had been discussion among staff members about the length of AA's finger nails and that she was scratching and you may have said to your colleagues something like AA's nails were like witches' nails. You said that you had gone back to YY to give this explanation. The record of your initial meeting with YY on 29 June 2016 records a different explanation you had given on your return to speak to YY. There was no mention of discussion among colleagues, instead you were recorded as stating that "I probably said that when she scratched me, I probably said your (*sic*) acting like a witch AA scratching me. That's what I'm thinking". Despite signing the note of this meeting, which you said you did not read, you denied giving this explanation to YY, both in your oral testimony and the witness statement you gave to YY on 19 July 2016. The Panel did not find credible your explanation that you just signed the note without reading it because your Manager asked you to.

Allegations 2.a – 2.e

The Panel preferred and accepted ZZ's evidence. She spoke in detail when describing your words and actions which presented as a genuine account. You

kept pushing BB from behind to get her to hurry up. You were also grabbing and pulling BB's Zimmer to make her walk faster. You were being rough. ZZ described BB saying she was tired and not feeling well. When she said she was going to fall, you said to BB to the effect that she should just fall then. Despite BB saying she was going to fall, ZZ was clear in her evidence that BB was not exhibiting any physical indication that she might fall. She was holding on to her Zimmer and was not losing her balance. ZZ described you taking BB out of balance and tilting her back so as to cause a controlled fall to the floor, with you supporting BB in the fall. ZZ made clear that she was not suggesting you pushed BB and caused her to fall. ZZ considered that this was done to show who was in control. You then left BB on the floor, stating words to the effect that you were going to leave BB there as she could manage. You did however end up assisting ZZ to help BB up from the floor and onto a chair. ZZ was broadly consistent with accounts she had previously given to her employer on 29 June 2016 and 4 August 2016 and to the SSSC dated 26 October 2016 and 10 March 2019, albeit she had to refresh her memory of what you said from accounts given in 2016 and the Panel recognised that you pushing BB was not said by ZZ to be what resulted in a fall by BB. The Panel noted that ZZ had not signed the note of the meeting on 29 June 2016. On the other hand, whilst consistent in your denial of these allegations, you had given varying explanations over time. This included making no mention of a controlled fall in the witness statement you gave to your employer on 19 July 2016, when you stated that BB had just "went to the ground" and "placed herself on the ground". Also, in your SSSC Personal Statement Form, you described what happened as "BB then went down onto the floor of her own accord and sat there".

Allegations 3.a - 3.b

The Panel preferred and accepted ZZ's evidence. During her oral evidence she gave a clear account that you were repeatedly pushing CC, not guiding her as you said, when CC had been making an attempt to leave the Home. This was something CC did from time to time and which was documented in her care plan. When CC stopped walking, you would push her again. She described CC turning to slap you on the face. ZZ was balanced in her evidence when she explained that you reacted professionally when slapped and did not lose your temper. The Panel did consider the inconsistency in the record made of the discussion ZZ had with YY on 29 June 2016, where it referred to you pushing CC to the front of her body, something YY stated in her oral evidence. This record was not one that ZZ had signed. In her oral evidence, YY explained that she thought you'd been pushing on CC's front because of the slap being to your face. ZZ's account was otherwise broadly consistent with the witness statement she gave to her employer on 4 August 2016 and to the SSSC dated 26 October 2016. Whilst recognising you denied being slapped, the Panel saw no reason for ZZ to have fabricated this matter. In her evidence, YY explained that she would expect a record to have been made of these matters.

Allegation 4

The Panel preferred and accepted XX's evidence on this matter. During her oral evidence she gave a clear account that you were physically pushing CC down a

corridor, not guiding her, after CC had made an attempt to leave the Home, something CC did from time to time and which was documented in her care plan. She described force being involved. She explained that CC was turning round and telling you to stop pushing her, but you didn't. This had gone on for about 10 minutes. Whilst recognising that XX's SSSC witness statement signed on 7 October 2016 was not particularly detailed, her oral testimony was broadly consistent in the material aspects. During your oral evidence you were not in a position to give evidence specifically about this matter and were unsure what event was being referred to.

Allegations 5.a - 5.b

The Panel preferred and accepted ZZ's evidence. She gave clear evidence that DD was being verbally aggressive and did not want to sit on the commode, but you forced her to sit on it. She explained that when DD did not want to stand from the commode, you tilted the commode to force DD to stand. ZZ spoke about your general manner of being in a hurry. The Panel did not consider that you had simply carried out a recognised moving and handling procedure. ZZ was balanced in acknowledging that she saw no issue with the technique, rather it was the level of force used. Her oral evidence was broadly consistent with accounts she gave to her employer on 29 June 2016 and 4 August 2016 and her SSSC witness statement signed on 26 October 2016.

The Panel did not consider that the fact that DD was urinating on the floor was a reason for you to force her to sit on the commode when DD did not wish to do so.

Allegation 7

You denied this allegation, explaining that "c**t" was a word you would never use and that you did not swear in the workplace. The Panel preferred and accepted XX's evidence on this matter. Whilst recognising that there were some inconsistencies in the accounts XX had given (for example, stating in her SSSC statement signed on 7 October 2016 that the comment was said to her, but in oral testimony that it was said to EE), the Panel was satisfied that you said these words in the lounge area of the Home when XX, EE and other residents were there and EE was being sat down into a chair. The Panel did not consider that the inconsistency in XX's evidence about to whom the words were said undermined the credibility and reliability of her evidence about you saying these words in the presence of residents.

Allegations 8.a - 8.b

During your evidence, you accepted that there had been some contact between you and XX at the Tesco store, which you described as no more than brushing shoulders with someone you had not initially realised was XX. The Panel preferred and accepted XX's evidence on this incident. She gave a clear account that the contact between you was more than this. She explained that you had seen her and had intentionally hit your right shoulder off her right shoulder as you passed each other. She felt intimidated by this. XX's oral evidence was consistent with the terms of the letter she wrote to the SSSC dated 7 December 2017 and her SSSC witness statement signed on 6 July 2018. The Panel did not

consider that XX had exaggerated her evidence on this matter. There was a motivation for you to have acted as XX described, given that XX had previously reported concerns about your practice.

Allegations proved/not proved

Accordingly, the Panel found that each of the allegations (as amended) was proved.

Finding on impairment of fitness to practise

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

You did not admit impairment of your fitness to practise.

The Panel received a bundle of impairment papers, numbered I1–I84.

Your Representative made an application to have a late document admitted, namely an Aberdeenshire Council Job Profile for a Care & Support Worker dated March 2014.

The Presenter consented to the document being admitted.

The Panel decided to admit the document in terms of Rule 32.7.a. The document was numbered I85-I86.

SSSC's further evidence

The Presenter addressed the Panel briefly on the impairment bundle of papers. The papers included references in support of you. The Presenter submitted that these references were subjective. They were from three years ago and did not relate to your current conduct. The papers included also documents relating to supervision and remediation, and an Interim Conditions Order (ICO) that had been imposed by the Preliminary Proceedings Sub-committee (PPSC) in December 2016. The Presenter submitted that, again, these documents did not relate to your current conduct.

The Presenter intended to make full submissions on the question of impairment, once she had heard your further oral evidence.

Admission of impairment of fitness to practise

On reconvening on day six of the hearing, your Representative advised that you had reflected on your position overnight and in light of the Panel's findings of fact. You wished now to admit impairment of fitness to practise on the ground of misconduct. You intended to give further evidence at the mitigation and sanctions stage of the hearing.

In light of the admission, in terms of Rule 19.2, the Panel considered whether or not it was satisfied that your fitness to practise is impaired on the ground of misconduct. The Panel was so satisfied. Accordingly, the Panel finds that your fitness to practise is impaired on the ground of misconduct.

Mitigation and sanctions

In light of the Panel's finding on impairment of fitness to practise, the Panel went on to consider mitigation and sanctions.

The Panel received a reflective account you had prepared, which was numbered S1–S4.

Following a request from the Panel for a copy of your more recent supervision and training documents relating to your current role, the Panel received further documents, which were numbered S5–S20.

SSSC's submissions

The Presenter did not lead any further evidence or call any further witnesses.

The Presenter referred to the factors that should be considered in deciding what sanction to impose set out at Rule 20.9.

The Presenter reminded the Panel that sanctions were not intended to be punitive. Rather, they were one of the tools used by a regulator to fulfil its duties.

The Presenter submitted that the Panel should have regard to the Decisions Guidance.

The Presenter cited *Bolton v The Law Society* [1993] EWCA Civ 32, paragraphs 15 and 16; *Gupta v General Medical Council* [2001] UKPC 61, paragraph 21; and *Wentzel v General Medical Council* [2004] EWHC 381 (Admin), paragraph 25.

In relation to proportionality, the Presenter submitted that the Panel had to weigh the public interest and your interests and decide what sanction, if any, was appropriate.

The Presenter submitted that the Panel should consider the aggravating and mitigating factors referred to at section 8 of the Decisions Guidance. This section of the Guidance stated that public protection and upholding the public interest were the overriding aims. The seriousness of the behaviour was also important. In some cases, the behaviour was so serious that it indicated a Worker was fundamentally unsuitable to be registered.

In addressing the Panel on the aggravating and mitigating factors set out at section 8 of the Decisions Guidance, the Presenter submitted that:

- Insight, regret and apology – The Panel was still to hear your further evidence. This factor was currently neutral.
- Previous history - You were registered with the SSSC in 2012. The allegations were referred to the SSSC in 2016. This was a mitigating factor.
- Circumstances leading up to the behaviour – There had been a huge disregard for the Codes. The behaviour was deliberate. At this stage, this was an aggravating factor.
- Length of time since the behaviour and subsequent practice – This was neutral. The behaviour occurred largely in 2016. Three years had passed since then. Irrespective of the passage of time, this factor could not be held to be mitigating, and so it was neutral.
- Conduct inside or outside of work – The behaviour inside work was aggravating given that it involved vulnerable service users.
- Duress – There was no evidence of duress, and so this was neutral.
- References or testimonials – There were none which related to your current practice. There were several untested letters in the bundle of papers. The Panel should take account of the factors listed at paragraph 8.7. There were positive comments in your supervision notes from 2017. This was a neutral factor.
- Cooperation with the SSSC - You had engaged meaningfully and cooperated, so this was a mitigating factor.
- Isolated incident or a pattern of behaviour. The Panel had found a pattern of behaviour. Given the nature and extent of the behaviour, this was an aggravating factor.
- Consequences of the behaviour – There was no actual harm, but there was an extremely serious risk of harm associated with the behaviour, given the pattern of behaviour involving vulnerable service users. This was an aggravating factor.
- Abuse of trust – The behaviour involved a significant abuse of trust.
- Concealing wrongdoing – Your failure to record the slap to your face concealed wrongdoing and was an aggravating factor.

In addressing the Panel on which sanction should be imposed, the Presenter referred to the Decisions Guidance, in particular paragraph 13.2. She submitted that the Panel required to start with a consideration of the least restrictive sanction. She submitted that:

- It was not appropriate for no action to be taken. The Panel had found impairment. It was necessary to take action. This was not a case with rare or exceptional circumstances. The behaviour found proved was serious. It was necessary to impose a sanction for public protection and public interest reasons. The public would ask questions if no action was taken.
- A warning was not appropriate. The impairment was not at the lower end of the scale of impairment. Your character and circumstances were such

that it could not be said there was no risk. There was a likelihood of repetition of the behaviour because it was attitudinal in nature.

- Conditions were not appropriate. The behaviour was so serious that no conditions could guard against the behaviour happening again. There were fundamental failings in practice. The SSSC could not be confident the behaviour would not be repeated.
- For the reasons already given, a warning and conditions combined was not appropriate.
- A suspension order was not suitable. It was difficult to see what it would achieve. If there were actions or steps you could take to remedy matters, then perhaps suspension was a possible sanction. However, the SSSC did not consider there were any such steps which could be taken. There was nothing that could be done during any period of suspension.
- For the reasons already given, conditions and a suspension order combined was not appropriate.
- Your case was one where removal was justified. There were public protection and public interest concerns. Most of the factors listed at paragraph 13.2 of the Decisions Guidance could be ticked off as relevant, namely serious, deliberate, grossly negligent or reckless acts and omissions; a significant abuse of trust; a serious departure from the standards set out in the Codes; a pattern of unacceptable behaviour; and no evidence that there is likely to be remediation.

Your further evidence and submissions

You gave further evidence to the Panel. This included speaking about:

- Your current role as a Care & Support Worker with Aberdeenshire Council based at Jarvis Court, a sheltered housing facility. You were currently working Tuesday-Friday, 26 ½ hours per week. The people who use the service includes people with Dementia and with disabilities. You have supervision every six weeks and receive training.
- How you had changed your practice in light of the allegations which had brought you before the SSSC. You spoke about understanding the consequences of the matters before the Panel. When working with people, you tried to be as dignified as you would want for yourself or your family members if they were being cared for. You were very upset about what people had said about you. You had thought about matters every day for the past three and a half years. You were always respectful of what the people you worked with wanted, what their needs were and their dignity. By being always respectful, you meant listening to points of view and service users' needs. If you found yourself in the situation again of trying to help or guide someone who was refusing to be guided, you explained that you would not force anyone to do something they didn't want to do. You would wait or try different tactics such as different body language or different speech. You were now very careful and also thought before you spoke. You spoke about bad language being disrespectful. You asked colleagues for feedback. You recognised that you could be loud and

boisterous. You ensure that you are patient and speak quietly if that is what is needed.

- How you had reflected on your practice, including why it would matter not to be rough when working with service users. You spoke about the trust vulnerable people place in you to take care of them and ensure their dignity. You explained the potential impact on service users if they heard and understood words such as those used in relation to AA, including that the person could be very upset and take the comments personally. In relation to the facts that had been found in relation to BB, CC and DD, you described that the impact could be that there was no trust. It could be seen as bullying and a misuse of power.
- The situation and atmosphere at the Home at the relevant time. There were problems with the Home being understaffed, which could cause you to feel stressed out.
- The period during which your Registration was the subject of an ICO. You felt that you had put into practice things you had learned during supervision and training.
- How much you loved working in care. You would be heartbroken not to be able to work in care.
- The potential financial impact on you. You lived with your husband. You were still paying your mortgage. One son still lived with you when he was home from his role as an officer on a cruise ship. You were due to become a grandparent for the first time next month.

Your Representative advised that she took no issue with the case law cited by the Presenter.

In relation to section 8 of the Decisions Guidance, your Representative submitted that:

- Insight, regret and apology – It was difficult to demonstrate insight when you had maintained that you did not agree with parts of the allegations. Upon reflecting last night and this morning on the facts found proved, you were clear that such allegations against a Worker would lead to a finding of impairment and had instructed your Representative to indicate that. You understood how serious the allegations were, particularly being overly physical, rough or forceful with service users, using inappropriate language with service users and being forceful with a former colleague. You gave evidence about your understanding of the impact on service users of such actions. You could explain what it meant to treat someone with dignity. It had been difficult for you to articulate what that meant. You understood it meant using your power. You understood the importance of treating service users well. You understood you were in a position where you could cause them to feel fearful or distressed. You understood the importance of listening, eye contact and considering points of view. You understood your role as a professional. You had demonstrated a great deal of insight into your role.

- Previous history – You had had a 20-year unblemished career until now. You had not had any previous disciplinary issues and no prior SSSC concerns.
- Circumstances leading up to the behaviour – There had been staffing issues at the Home.
- Length of time since the behaviour and subsequent practice – This factor was key. The Panel should consider whether you had remediated some of the bad practice. No issues had been reported to the SSSC since the matters before the Panel had taken place. No serious issues had been raised by your employer during supervision sessions. Your employer had reacted immediately to produce your supervision notes over the lunch adjournment to assist with the hearing. Some of the concerns about your practice were attitudinal. In relation to the racially offensive remark, which you admitted, you did not understand at the time that this was offensive, but now you did. You understood why certain language was not appropriate. In terms of the risk posed to service users, ZZ considered you had been too rough and forceful at times. You had reflected on this. Given the length of time since the incidents and the fact there had been no other complaints, and you had moved to new employment who knew about SSSC proceedings, had there been any suggestion of continuing bad practice this would have been raised by now. You were now working with a range of service users, some of whom would be able to communicate if there were any issues. This would mitigate against the risk of repetition in the future. You had taken steps to address the concerns, including asking for feedback from colleagues and addressing this in your reflective account.
- Conduct inside or outside of work – The behaviour was mostly inside work, with the incident outside work still being related to work because it involved a colleague. The behaviour which occurred involved a specific time period and specific people. This should be a mitigating factor.
- Cooperation with the SSSC – You had provided full and considered comments on the allegations. You had attended the Temporary Order (TO) and Impairment hearings. You had fully complied and co-operated with what had been a very long process which had created psychological hardship for you.
- Isolated incident or a pattern of behaviour - There was clearly a pattern, but it was a specific time period and related to specific parties. The pattern had not continued into your current workplace.
- Consequences of the behaviour – Aside from the distress felt by XX, no harm had been caused, including to service users. That said, you accepted that you clearly put service users at risk of harm. This was one of the reasons you did not dispute impairment of fitness to practise.
- Abuse of trust – There was not an abuse of trust per se. Rather, at its highest, it related to a skills issue. In care work, people have to touch and guide people, move people and undertake intimate personal care. It was very challenging after the fact to objectively work out what was appropriate guiding and what did or did not amount to force. The Panel had come to its conclusion, but if you had been too rough in the past, it was certainly not the case now. Documents I37-I79 detailed discussions about what was

good care, moving and handling and in relation to those with Dementia. It may well be this was a skills issue which had now been addressed and would continually be addressed into the future. In relation to attitudinal concerns about the use of bad language, you understood what was and was not appropriate language in the workplace.

- Concealing wrongdoing – In your evidence, you always came across as open and honest. The failure to record the slap from CC was not concealment of wrongdoing. You did not admit that there had been a slap. There was no attempt to conceal information throughout this process.

In addressing the Panel on which sanction should be imposed, your Representative submitted that in relation to public protection and upholding the public interest and public confidence, there was no demonstrable risk, given your practice in the last year. Removal would accordingly have to be necessary in order to maintain public confidence. You accept members of the public would think the behaviour was serious and would be concerned. You understood the need to mark the seriousness of the behaviour.

Your Representative submitted that the seriousness could be marked and the public adequately protected by imposing a warning alongside a conditions order requiring you to submit your periodic supervision session records to the SSSC for a period of one-two years. This would mitigate any risk the Panel had no doubt assessed and would maintain public confidence in the SSSC. This would also allow you to continue working. The public also had an interest in the pool of carers available, and in not losing someone from that pool. There was a public interest in some of the most vulnerable people in society being looked after by a dedicated and experienced carer like you. It was clear you cared a great deal about your service users. Your references and testimonials indicated that you got on well with service users and brought a lot of joy into their lives. If you were removed from the Register, this would have a very large impact on you financially and psychologically. It would likely be reported in the local newspapers. It could be very damaging for you. You understood that the public interest trumped your personal interests, but the Panel's duty was to consider the least restrictive sanction. A warning and conditions could do that whilst protecting the public.

In relation to any conditions that involved supervision, your Representative suggested that your current supervision sessions did have a structure such that themes associated with use of language, moving and handling and issues with colleagues would be discussed. That said, it was recognised that you could move employer, although your career in care had always been with you employed by Aberdeenshire Council.

Note of proposed condition

In terms of Rule 21.1, the Panel proposed to impose a condition on your Registration in the part of the Register for Practitioners in a Care Home Service for Adults, along with a warning.

In terms of Rule 21.2, the condition the Panel proposed to impose was:

1. Within three months of the date on which the condition comes into effect, you must submit a written reflective account to the SSSC, the content of which must be to the reasonable satisfaction of the SSSC. Your reflective account must specifically address:
 - a. your reflection on the Panel's findings of fact and finding of impairment in relation to the incidents which occurred and the impact upon people who use services and colleagues
 - b. your understanding of how your behaviour breached the Codes of Practice for social service workers
 - c. any lessons you have learnt and how this will impact on your future practice
 - d. how your role as a social service worker impacts on the people who use services you work within, their families, your colleagues and the wider public.
2. At least every six weeks for a period of two years from the date on which the condition comes into effect, you must:
 - a. participate in supervision with your line manager including focus on your current practice in terms of the standards expected under the Codes, your training and personal development, your relationships with colleagues, how you communicate in the workplace and how you interact with people who use services verbally and physically so as to respect and maintain their dignity and treat them as individuals
 - b. provide the SSSC with evidence of your supervision by submitting copies of your supervision record signed by you and your line manager, within two weeks of the supervision session taking place.
3. You must:
 - c. prior to accepting any offer of new employment, including agency work, inform any prospective social services employer or agency of the terms of the condition listed at 2. above
 - d. within two weeks of commencing a new role in social services you must submit evidence to the SSSC, endorsed by your employer or agency, of their awareness of the condition listed at 2. above.
4. You must immediately notify the SSSC of any change in your employment circumstances, including:

- c. details of any post within social services that you accept, immediately upon accepting the post and before starting in post
- d. if any formal disciplinary proceedings against you are started by your employer, full details of the proceedings, within seven days of being formally notified of such proceedings.

The reasons for this proposed condition would be to allow you more fully to reflect on the Panel's findings of fact and its finding on impairment of fitness to practise to evidence what you have learned in order to improve future practice, and to address the public protection and public interest risks which the Panel considers exist.

On reconvening after an adjournment to allow parties to consider the Note of Proposed Condition, the Presenter advised that she had no further submissions to make. She provided the Panel with further information following contact she had made with your employer. She advised that your employer was in a position to support you in complying with the supervision requirements of the condition. Your Representative advised that you were ready, willing and able to comply with the condition.

Reasons

The decision on sanction was a matter for the Panel, exercising its skilled judgement. The Panel recognised that the purpose of any sanction imposed was not punishment, although it may have a punitive effect on you.

In reaching its decision, the Panel had regard to the evidence, both parties' submissions and the factors referred to at Rule 20.9, namely:

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

The Panel took account of the Decisions Guidance, including part A, sections 6, 7 and 8; part B, section 13; and part D, section 15.

The Panel kept in mind the principles referred to in the case law cited, including that:

- The reputation of the social services profession is more important than the fortunes of any individual member (*Bolton v The Law Society*)
- Since the Panel was not primarily concerned with matters of punishment, considerations which would normally weigh in mitigation of punishment have less effect (*Gupta v General Medical Council*)
- Of the interests to be weighed, the maintenance of public confidence in the

social services profession was the paramount interest (*Wentzel v General Medical Council*).

In relation to the seriousness of your impairment of fitness to practise, the Panel considered that the impairment found was indeed serious. Each of the allegations found proved fell short of the standards expected and were sufficiently serious so as to amount to misconduct. The Panel considered that you had failed to comply with the parts of the Codes referred to in the Initial Notice of Referral, namely parts 1.1, 1.4, 1.6, 2.2, 2.4, 3.8, 5.1, 5.7, 5.8, 6.1, 6.2 and 6.5 of the Code in force prior to 1 November 2016 and parts 5.1, 5.7, 5.8 and 6.5 of the Code in force from 1 November 2016.

The Panel took account of each of the factors listed at section 8 of the Decisions Guidance. The Panel considered that mitigating factors present in your case were:

- Insight, regret and apology. The Panel recognised that you were entitled to deny the allegations, and also that you could not recollect some of the matters found proved. The Panel recognised also that this did not mean that insight could not be demonstrated, albeit this position inevitably limited the extent to which full and developed insight could be shown. That said, whilst the Panel had had reservations about the credibility and reliability of aspects of your evidence at the findings of fact stage of the hearing, this was not the case when you gave further evidence following the Panel's findings of fact. You presented in a manner that suggested you had properly reflected on the Panel's findings, even although you had only been able to do so overnight. Your evidence presented as genuine when you spoke about the implications for service users and others of the behaviour found proved, and how horrified you were at the findings. You were regretful. The Panel did consider that you were, in recent times, behaving differently, and were unlikely to repeat the behaviour found. The ICO previously imposed had required you to take steps by way of additional supervision and training in Dementia, which also went some way towards preventing a recurrence of the behaviours alleged.
- Previous history. There was no evidence of you previously having been found to have committed misconduct or had your fitness to practise found to be impaired. On the information before the Panel, you had had a career working in care since 1989, albeit your Registration with the SSSC was not until 2012.
- Length of time since the behaviour and subsequent practice. The impairment found occurred on dates between November 2015 and October 2017, although for the most part during the period January–June 2016. You had been working in social services since then, although not throughout the period to date, and had evidenced your practice and learning since 2016, which had not given rise to any evidence of further acts of misconduct.
- References or testimonials. There were several testimonials and references from a number of individuals with whom you had worked, and others, given

in 2016 and 2019. These were in positive terms and spoke highly of you and your practice over the years. The Panel was told that the authors knew the allegations against you and the purpose for which they had been asked to provide the document.

- Cooperation with the SSSC. You had fully co-operated and engaged with the SSSC during its investigation and the hearing process, including attending at the hearing and giving evidence before the Panel.

The Panel considered that aggravating factors present in your case were:

- Conduct inside or outside of work. The incidents mostly occurred in the workplace, with the one incident outside of work being nonetheless connected with work as it involved a colleague. This was an aggravating factor given the nature and seriousness of the impairment found.
- Consequences of the behaviour. Harm was caused to XX in that she felt intimidated by you following the incident at the Tesco store. Whilst recognising that no actual harm was caused to people who used services, people who use services and your colleagues were placed at unnecessary increased risk of harm. Your actions relating to BB, CC and DD, whilst very poor practice and serious, did not amount to planned and premeditated acts.
- Abuse of trust. You abused the trust placed in you by particularly vulnerable service users.

The Panel considered that the other factors suggested in the Decisions Guidance were either not present, not relevant to matters or were neutral. This included:

- Circumstances leading up to the behaviour. There were factors on two sides which rendered this factor neutral overall. For example, although there was a degree of disregard for the Codes and you were an experienced worker, whilst the behaviour was deliberate the Panel did not consider that it was premeditated in the sense of being planned and there was clear evidence of an unhealthy work atmosphere among colleagues and issues with understaffing.
- Isolated incident or a pattern of behaviour. The impairment found could not be said to involve an isolated incident. Whilst in no way minimising the racially offensive remark made at the end of 2015 and the incident with your colleague in 2017, the Panel considered that the events between January–June 2016 comprised several instances of very poor practice during that period. The Panel considered carefully whether there was a pattern of behaviour which gave rise to concerns about your underlying values. Having seen and heard direct from you, particularly in light of the Panel's findings, the Panel did not consider that you were someone who was fundamentally unfit to work in care or who had deep-seated attitudinal issues. There did appear to be particular personality and work problems in 2016. Considerable time had passed since the incidents took place, without evidence of repetition of the matters which had brought you before the Panel.

- Concealing wrongdoing. The Panel did not consider that the failure to record the slap to CC amounted to concealment of wrongdoing. Rather, it was an example of poor practice.

In relation to the protection of the public:

- The impairment found includes behaviour amounting to verbally and/or physically abusive behaviour involving AA, BB, CC, DD and EE. It is behaviour which demonstrates a lack of regard for the dignity and respect of individuals in your care.
- Although there was no evidence or finding that actual harm had been caused to the residents in your care, there was the potential for physical, psychological and/or emotional harm to be caused to AA, BB, CC, DD and EE, and other residents. You abused the trust placed in you and the power your role carried with it. Some of the residents involved were particularly vulnerable, due their inability to understand and/or communicate when they had been subjected to abusive behaviour.
- Your failures to record events in the Daily Contact Records for BB and CC or in an Incident Report Form created increased risks for colleagues and other residents, in that members of staff would not have complete information about matters relevant to the care of these residents and risks arising.
- The racially offensive remark you made created risk of harm to colleagues who may be offended or upset by such language and concerned about the lack of respect for different cultures and races that such language demonstrates. Colleagues were also put at risk of such harm from being in your presence where verbally abusive comments were made to or in the presence of residents.
- Your behaviour towards XX when your paths crossed outside work caused her to feel intimidated.

In relation to the public interest in maintaining confidence in social services, the Panel considered that members of the public would rightly be concerned about the findings of fact and finding on impairment.

That said, in part as a result of the nature of the conditions imposed by the PPSC in December 2016, you had engaged in training and supervision which meant that a degree of remediation had already taken place in relation to the allegations which had now been found proved. Having regard to this, the fact that around three years had passed since most of the events had taken place, and the Panel's assessment of insight and regret in light of the further evidence you gave following the Panel making its findings of fact, the Panel did not consider that there was a significant risk of repetition of the impairment found, although the Panel could not exclude the risk entirely.

In drawing together and weighing all relevant factors, circumstances and interests in reaching its decision, the Panel started with a consideration of the least restrictive outcome. The Panel took account of the indicative factors set

out at paragraphs 13.2 and 15 of the Decisions Guidance. The Panel considered that:

- In light of the nature and seriousness of the Panel's findings of fact and the finding on impairment made, it was not appropriate for no further action to be taken. Further action was necessary in order to protect the public and to serve the public interest in promoting and maintaining standards and in maintaining public confidence in the profession and the SSSC as the regulator. There were no exceptional circumstances that would justify a decision to take no further action.
- In relation to a warning, your behaviour could not be said to be at the lower end of the scale of impairment. Whilst undoubtedly serious, it was not, however, at the highest end of the scale, when account was taken of the overall context and circumstances as found by the Panel. That said, whilst your character and circumstances were now such that the Panel considered the behaviour alleged was unlikely to be repeated, there had been steps taken already to correct the behaviour and a degree of insight had been shown in the limited time you had to reflect on the Panel's findings, the Panel did not consider that the public protection risks and the public interest would be served by a warning on its own. A warning would not reflect the gravity of the Panel's findings.
- Whilst a condition, on its own, was not appropriate, the Panel considered that a condition which included a reflective account and supervision requirements could form part of an appropriate sanction which would address the public protection and public interest concerns in your case. Your Representative had advised that you were willing to engage in this process and to comply with the condition proposed. The Panel considered that the condition proposed would enable you more fully to develop and demonstrate fuller insight and reflection on your behaviour and the Panel's findings. Your current employer was in a position to support you in complying with the condition.
- A warning and a condition was the appropriate sanction. Such a sanction would mark the unacceptable nature of the misconduct found and would effectively address the public protection concerns and the public interest in promoting and maintaining standards and maintaining public confidence in the profession and the SSSC. The Panel recognised that there may well be hardship caused to you as a result of this sanction, including professional and reputational. The Panel considered, however, that a warning for a period of two years and a condition in the terms proposed was the necessary and proportionate sanction in your case.

Legal advice

A Note of Legal Advice provided by the Chair is attached to this Notice.