

**UKCP's Complaints and Conduct Process**  
**Complaint Hearing**

**13 & 14 December 2021**

**Remote hearing**

**Name of Registrant:** Adam Saltiel - Not Present

**Heard by:** Appeal Panel

**Appeal Panel Members:** Linda Owen (Lay Chair)  
Vivienne Taylor (CPJAC)  
John Wren (UTC)

**Legal Assessor:** Jon Whitfield QC (Doughty Street Chambers)

**Panel Secretary:** Lizzy Millar

**UKCP Presenting Officer:** Tom Stevens (Doughty Street Chambers)

**Counsel for Registrant:** Not Present

**Appeal decision:** Upheld

**Misconduct:** Proved

**Sanction:** Written apology, warning letter, further training and a report

## Proceeding in Absence

1. The Registrant was not in attendance at the hearing. The Panel received no written submissions from the Registrant. There was in the bundle written confirmation submitted by the Registrant's legal representative that the Registrant did not wish to attend the proceedings.
2. Mr Stevens, on behalf of UKCP made an application to proceed in the absence of the Registrant.
3. The Panel had read C2 the Service Bundle. This showed that the UKCP had notified the Registrant and Kingsley Napley his former legal representative of the appeal hearing scheduled to take place on 13 and 14 December 2021 in response to the Adjudication Panel hearing on 18 and 19 August 2021.
4. Mr Stevens submitted that the Registrant was clearly aware of the appeal and of the hearing having engaged in correspondence with the UKCP. He noted that the Registrant's then solicitors had indicated that the Registrant would not participate in the appeal process. Mr Stevens submitted that the Registrant had absented himself from proceedings and that it was in the public interest to proceed in his absence.
5. The Panel considered whether it would be in the public interest to proceed in the Registrant's absence.
6. The Panel accepted the advice of the Legal Adviser who referred the Panel to the factors set out in the case of *R v Jones* [2003] 1 AC 1, HL and the decision of the Court of Appeal in the *General Medical Council v Adeogba* [2016] EWCA Civ 162.
7. The Panel considered factors set out in the above cases. It was mindful that the discretion to proceed was one to be exercised with the utmost care and caution. In deciding whether to proceed in the absence of the Registrant, the Panel took account of the overarching objective of public protection, the expeditious disposal of the case and the Registrant's right to a fair hearing.
8. The Panel had regard to the UKCP's attempts to contact the Registrant by letter, email and to his stated intention not to engage. The Panel concluded that the Registrant had decided not to attend and that adjourning the hearing would make no difference to the outcome. The Panel

was satisfied that it could ensure that a hearing was fair and in accordance with the overarching objective.

9. The Panel concluded that it should proceed in the absence of the Registrant. In reaching this decision, the Panel considered the submissions of the UKCP and the advice of the Legal Adviser. It had regard to the factors set out in the decisions of Jones and Adeogba including:
- the Registrant's lack of engagement with the regulatory process.
  - the numerous attempts by the UKCP to contact the Registrant.
  - there was no application for an adjournment before them.
  - adjourning the proceedings was unlikely to secure the Registrant's attendance as he had not engaged; and
  - there was a strong public interest in the expeditious disposal of this case.

## **Background**

10. The Registrant appeared before the Panel (the "Adjudication Panel") on 18 and 19 August 2021. The Panel heard this list of allegations:

*Adam Saltiel, being a UKCP registered psychotherapist since at least 2014, provided psychotherapy to Client A between October 2018 and August 2019:*

1. *In February 2019 you disclosed information about Client A to the Metropolitan Police in the absence of Client A's verifiable consent.*
2. *Your conduct at 1 above was:*
  - a. *Inappropriate; and/or*
  - b. *Unprofessional.*
3. *The behaviours set out at 1 – 2 above are in breach of the UK Council for Psychotherapy Ethical Principles and Code of Professional Conduct (the Code). In particular:*
  - a. *You failed to take responsibility for and respect Client A's best interests when providing therapy thereby breaching clause 1.1 of the code.*
  - b. *You failed to respect, protect and preserve the confidentiality of Client A. You failed to notify Client A, when appropriate or on request that there are legal and ethical limits of*

*that confidentiality and circumstances under which you might disclose confidential information to a third party thereby breaching clause 3.1 of the Code.*

- c. You failed to protect sensitive and personally identifiable information obtained from the course of your work as a psychotherapist thereby breaching clause 3.2 of the Code.*
- d. You failed to get clarification at the outset of the potential impacts this could have on your commitment of confidentiality to Client A. You failed to maintain this clarification as the situation proceeds and to seek legal and ethical advice as appropriate thereby breaching section 3.3 of the Code.*
- e. You failed to safeguard the welfare and anonymity of Client A when any form of publication of clinical material is being considered and failed to always obtain Client A verifiable consent in any case where the welfare or anonymity of a client may be compromised. This includes situations where a client or former client might recognise themselves in case material despite the changing of names or actual circumstances thereby breaching section 3.4 of the Code.*

*4. The Adjudication Panel considered the following preliminary matters:*

- a. The UKCP bundle amounted to 78 pages. The bundle will herein be referred to as C1*
- b. The Registrant's Statement amounting to 13 pages, herein be referred to as R1*
- c. The statement of [REDACTED] amounting to 5 pages, herein referred to as R2*
- d. The statement of [REDACTED] amounting to 3 pages herein referred to as R3*
- e. The statement of [REDACTED] amounting to 4 pages herein referred to as R4*
- f. The Respondent's first exhibit bundle amounting to 6 pages, herein referred to as R5*
- g. The Respondent's second exhibit bundle amounting to 17 pages herein referred to as R6*

## **Panel Ruling**

11. The Adjudication Panel found charges 1, 2, 3B, 3C and 3D proved and 3A and 3E not proved.

12. Notwithstanding the adverse findings and breaches of the Code, the Adjudication Panel did not find misconduct. In addressing whether the facts proved amounted to misconduct, the Panel paid regard to the words of Lord Clyde in the case of *Roylance v. General Medical Council* namely:

*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required by...a practitioner in the particular circumstances.”*

13. The Adjudication Panel characterised the breaches of the Ethical Code of Conduct as “careless acts”. It held that “*taking into consideration all of the relevant evidence, the Panel did not find that the Registrant’s actions would be viewed as deplorable by his fellow practitioners and the test for misconduct was therefore not met*”.

14. The Adjudication Panel thus determined that the allegations found proved did not meet the threshold to constitute misconduct.

15. The parties were notified of their right to appeal the decision within 28 days from the date of the decision of the Adjudication Panel on 19 August 2021.

## **The Appeal**

16. In accordance with section 8 of the UKCP's Complaints and Conduct Process ("CCP") the UKCP via its Registrar appealed the decision of the Adjudication Panel on the grounds that the decision was unsafe due to two procedural errors/irregularities namely a failure to consider relevant information and a lack of reasons. Furthermore, that the decision not to find impairment and not impose a sanction was unduly lenient.

## **GROUND ONE: PROCEDURAL ERROR OR IRREGULARITY**

### **Failure to take account of relevant information**

17. In its written submissions the UKCP first argued that the Adjudication Panel failed to have regard to relevant considerations (including the various definitions of misconduct and the Indicative Sanctions Guidance). Second, the UKCP argued that the Panel failed to provide adequate reasons for its decision as to why the conduct did not amount to misconduct.

18. The UKCP submitted that the Adjudication Panel found breaches to three fundamental provisions of the Code (standards 3.1, 3.2 and 3.3) proved. The Registrant admitted breaching standard 3.1 and denied 3.2 and 3.3. The Panel found that his actions were inappropriate and unprofessional.
19. The provisions of the Code breached were:
- 3.1 The psychotherapist commits to respect, protect and preserve the confidentiality of their clients. The psychotherapist undertakes to notify their clients, when appropriate or on request that there are legal and ethical limits of that confidentiality and circumstances under which the psychotherapist might disclose confidential information to a third party.*
- 3.2 The psychotherapist commits to protect sensitive and personally identifiable information obtained from the course of their work as a psychotherapist.*
- 3.3 Should the psychotherapist be required by law to serve in judicial or administrative proceedings, they commit to getting clarification at the outset of the potential impacts this could have on their commitment of confidentiality to any client. In such a situation the psychotherapist commits to maintaining this clarification as the situation proceeds and to seek legal and ethical advice as appropriate*
20. The Registrant accepted that he had failed to obtain verifiable consent from Client A. Although the Adjudication Panel had concluded that there was a limited implied consent provided by Client A in supplying the Registrant's details to the Metropolitan Police, this was insufficient for the level of disclosure made.
21. The Adjudication Panel found that the Registrant failed to clarify with Client A at the outset of their professional relationship either in writing or orally under what circumstances he might disclose confidential information.
22. It was agreed by the parties that the Registrant was not legally compelled to provide the disclosure to the Metropolitan Police. Further, the disclosure made by the Registrant exceeded what was required in the circumstances. He was uncertain of the facts and had not discussed the issue with Client A. The Registrant therefore failed to protect sensitive and personal information. The Adjudication Panel concluded that the Registrant had failed to clarify with [REDACTED] [REDACTED] (the officer who made the request for information) the nature and purpose of the disclosure. The Registrant thus failed to clarify what potential impact, if any, his disclosure would have.

23. In determining that the allegations found proved did not meet the threshold to constitute misconduct the Adjudication Panel concluded that *"the breaches of the Ethical Code of Conduct amounted to careless acts. But taking into consideration all of the relevant evidence, the Panel did not find that the Registrant's actions would be viewed as deplorable by his fellow practitioners and the test for misconduct was therefore not met."*
24. The UKCP's written submission included that the Adjudication Panel had not paid regard to cases other than the case of *Roylance v General Medical Council (No 2) [2004] EWHC 2317* when determining whether the conduct found proved amounted to misconduct. However, in oral submissions Mr Stevens informed the Appeal Panel that this ground of appeal could no longer be relied upon.
25. Mr Stevens explained that having listened to the recording of the hearing, it was clear the Adjudication Panel were advised of cases other than *Roylance* and, he noted the Adjudication Panel referred to the term "deplorable" in its determination. This is a term used to describe misconduct in cases other than *Roylance*. He therefore conceded that it could not be argued the Adjudication Panel failed to consider further caselaw.
26. As to the second part of Ground One, Mr Stevens maintained that the UKCP argued the Adjudication Panel's finding of no misconduct was inconsistent with the expectation of the Indicative Sanctions Guidance (the ISG) and particularly Paragraph 5.1 that such serious breaches would ordinarily result in a finding of misconduct. The ISG was not referred to in the reasons provided by the Adjudication Panel. As such it was submitted that there was no evidence the Adjudication Panel had considered relevant information namely the ISG.

## **Breach of confidentiality**

### UKCP Indicative Sanctions Guidance

*5.1.1 Confidentiality is one of the most important ethical obligations that a Registrant has to their clients and the wider public. A proved breach of confidentiality, whether by admission of the Registrant or the determination of a panel will nearly always constitute professional misconduct (our emphasis).*

*5.1.2 When considering whether a sanction is necessary to remedy the Registrant's failings, a panel must consider:*

- Whether the breach was a once-off instance;*
- The reason for the disclosure;*

- *Whether the Registrant has shown insight and recognises the failings;*
- *The likelihood of repetition;*
- *Whether the breach arose due to a lack of knowledge or understanding;*
- *Any bad faith or improper motive evident; and*
- *Any public interest reason for the disclosure and to what extent public confidence in the profession may be undermined by this particular case.*

*5.1.3 The minimum sanction appropriate for a breach of confidentiality is a warning. This may be appropriate in circumstances in which the breach was a once-off incident and the Registrant has shown insight to their failings. A breach of confidentiality will only result in termination of UKCP registration in circumstances where a Registrant has shown a persistent and intentional disregard for client confidentiality and the public confidence in the profession might be lost if such a Registrant was to remain on the Register.*

27. Mr Stevens submitted that the ISG referenced misconduct and was therefore relevant. He argued that it was clear from the ISG that a finding of misconduct will “nearly always” follow from a breach of confidentiality. Not to find misconduct was the exception. That being the case, had the Adjudication Panel taken account of the ISG it would have come to a different conclusion. He said they had not taken account of a ‘vital part of the puzzle’.
28. The UKCP argued that the Adjudication Panel failed to have regard to the UKCP's clear statement as to how breaches of confidentiality should be viewed. The Adjudication Panel having found the conduct to have been inappropriate and unprofessional, did not address how the conduct could not be considered "elementary and grievous" based on a straightforward reading of the Code.

### **Failure to provide adequate reasons**

29. The second ground of alleged procedural error related to the Adjudication Panel failing to provide adequate reasons for its decision why the conduct found proved did not amount to misconduct.
30. In their written submissions the UKCP observed that the Adjudication Panel's decision did not explain why a proved breach of confidentiality, which will, according to the ISG, "*nearly always constitute professional misconduct*", did not amount to misconduct in this case. The Adjudication Panel failed to deal with the UKCP's submission that divulging personal confidential information was extremely serious and fell far below the required standard. It also



failed to reconcile the finding of inappropriate and unprofessional conduct with a conclusion that there was no misconduct.

31. In his oral submissions, Mr Stevens adopted the above and submitted that the reasons provided by the Adjudication Panel at Paragraph 55 of their determination (see above at paragraph 13) did nothing to explain their decision on misconduct. It did not explain the evidence upon which its decision was based nor address the exceptional nature of such a finding.
32. Whilst the reasons stated that the Adjudication Panel had taken account of all relevant matters, Mr Stevens said this did not specify what they were or what weight ought to be applied to them. There was no reasoning as to why serious failings and breaches of the Code were said to be "careless", why they would not be regarded as deplorable or amount to misconduct. Mr Stevens submitted that in the absence of explanation the decision must be regarded as unsafe.
33. The UKCP said that parties are entitled to have sufficient reasons to know "*why they have won or why they have lost*". The Adjudication Panel's reasons failed to disclose why this case was exceptional. Referring to the breaches as "*careless acts*" and commenting that the Adjudication Panel was "*taking into consideration all of the relevant evidence*" left the UKCP none the wiser. This second procedural irregularity also rendered the decision unsafe, there being insufficient evidence that the Adjudication Panel had addressed these issues.
34. The UKCP submitted that it was genuinely left asking the question, why misconduct had not been found and thus why a sanction was not imposed.

## **GROUND TWO: THE DECISION ON SANCTION WAS UNDULY LENIENT**

35. The UKCP contended that but for the procedural irregularities, the Adjudication Panel could and should have found misconduct. Misconduct is in itself an adverse finding. Following this, there is a likelihood of a finding of impairment and thereafter a sanction.
36. Mr Stevens confirmed the UKCP's argument that a finding of no impairment was equivalent to "an acquittal" and according to *CRHP v Ruscillo and GMC [2004] EWCQ 1356* it amounted to a "decision on sanction that was unduly lenient". The Court identified the powers of the Professional Standards Authority (previously the Council for Healthcare Regulatory Excellence) as extending "just as much where a disciplinary tribunal wrongly concludes that

conduct does not amount to professional misconduct as where the tribunal imposes too lenient a penalty."

37. The UKCP reminded the Panel that the ISG indicates the minimum sanction for a breach of confidentiality should be a warning. However, the UKCP contended that, in this case, even a warning was insufficient since the Registrant had shown no insight into his shortcomings but had denied the conduct found proved; namely breaching the provisions of the Code. The UKCP submitted that a greater sanction than a warning was justified and appropriate in this case.

38. Mr Stevens submitted that, assuming the Panel found misconduct, it should go on to find impairment. The fact that the Registrant's breaches of the Code were the result of carelessness rather than being intentional, did not mitigate their seriousness.

39. Mr Stevens argued that there was current impairment based on public protection, the risk of repetition and on the basis of the questions in *CHRE v NMC and Grant* 2011 EWHC927. He submitted that the Registrant had breached a fundamental tenet of the profession (confidentiality) and had thereby brought the profession into disrepute. To make no finding of misconduct and/or no finding of impairment and/or to impose no sanction regarding breaches at the heart of the profession was likely to diminish public trust.

40. Mr Stevens observed that the Registrant's good character and the passage of time since the incident might reduce the risk of repetition. However, denying the breaches found proved and the Registrant's current lack of engagement suggested there was a lack of insight and thus a risk of repetition. Mr Stevens submitted that the ISG was clear and that finding of misconduct and impairment and a sanction were clearly to be expected.

### **The Panel's Determination**

41. The Appeal Panel accepted the advice of the Legal Assessor at each stage of its determination.

### **Ground One – procedural error (caselaw and ISG)**

42. The UKCP withdrew the first limb of this ground (relating to the lack of consideration of case-law). The Panel went on to consider the second limb, namely the lack of consideration of the ISG.

43. The Panel first considered the primary submission made by Mr Stevens that the ISG was relevant to the issues before the Adjudication Panel. The ISG is intended to assist panels in reaching conclusions on sanction and to promote consistency. The guidance is most frequently considered once findings of misconduct and impairment have been made.
44. However, Mr Stevens submitted that the ISG may also be used as a guide as to how serious certain conduct is regarded by the Regulator. That view of seriousness may be considered when a panel determines whether conduct found proved has fallen sufficiently below the standards expected of a competent registrant that it should be characterised as misconduct. In this respect Mr Stevens submitted that Paragraph 5.1.1 was relevant. It states that *“Confidentiality is one of the most important ethical obligations that a Registrant has to their clients and the wider public. A proved breach of confidentiality, whether by admission of the Registrant or the determination of a panel will nearly always constitute professional misconduct.”*
45. The Panel accepted Mr Stevens’ argument that the ISG is relevant to the issue of seriousness since it provides an indication of how seriousness may be viewed from the perspective of the relevant Regulator. The Panel was of the view that they are not determinative rather they are indicative and may or may not be persuasive in any given case. The Panel concluded that they are potentially relevant to the issue of misconduct.
46. The Panel noted that Paragraph 5.1.1 refers specifically to the central importance of confidentiality and how a breach of confidentiality *“will nearly always”* constitute misconduct. The implication is that the Regulator considers a breach of confidentiality to be serious and in most cases, it will indicate conduct far below that expected of a registered practitioner. Of course, seriousness is a matter to be determined by the Adjudicating Panel, that must take into account all of the relevant facts, including the submissions of the parties and the advice of the Legal Assessor.
47. The Panel had no evidence to suggest that the ISG was referred to by counsel before the Adjudication Panel, nor that it was referred to by the Legal Assessor, nor was it raised by the Adjudication Panel itself. The Adjudication Panel’s decision does not refer to the ISG. Taking these factors into account, the Panel concluded on balance of probability that the ISG was not considered by the Adjudication Panel. Having already concluded that the ISG was relevant, indicative and potentially persuasive, the Panel concluded that the Adjudication Panel had failed in its process by not considering it.

48. The Panel next considered whether this failure rendered the Adjudication Panel's finding unsafe. The Panel noted that the ISG made it plain that confidentiality lies at the heart of the profession and that a breach is regarded by the Regulator as so serious as to "nearly always" result in a finding of misconduct.
49. Having determined that the ISG was relevant and potentially persuasive upon the issue of seriousness, the Panel was satisfied on balance of probability that the above failure was a material one. Had the Adjudication Panel considered Paragraph 5.1.1 of the ISG it may have come to a different conclusion as to seriousness and thus to misconduct. That being the case the Panel was satisfied that the decision of the Adjudication Panel not to find misconduct was unsafe.

### **Ground One – procedural error (inadequate reasons)**

50. The Panel accepted the central thrust of the submission made by Mr Stevens on behalf of the UKCP that the reasons provided by an adjudication panel should be sufficiently detailed for the parties to understand why a decision has been reached and upon what evidence it is based. In this case the Adjudication Panel found that the Registrant had breached the important principle of confidentiality in three ways. They described these breaches as "careless acts" and concluded that fellow practitioners would not find these breaches to be "deplorable" therefore they did not amount to misconduct.
51. This Panel could see no reason given by the Adjudication Panel as to why it characterised the breaches as "careless" nor why fellow practitioners would not find three breaches of a fundamental principle of practice deplorable.
52. The determination did not fully explain these issues. The Panel was of the view that there was weight to Mr Stevens' submission that due to the importance of confidentiality and the indication within the ISG that a breach of confidentiality is likely to result in an adverse finding, not to find misconduct required careful explanation.
53. Without such explanation the parties were unable to determine the basis of an important decision and, this could undermine trust in the regulatory process. Bearing in mind the potential for an adverse finding in confidentiality cases, without clear reasoning why such a finding had not been made, the Panel was not satisfied that on balance of probability the decision was safe. Rather, the Panel concluded that the decision was unsafe.

## **Ground Two (undue leniency)**

54. The Panel again considered Mr Stevens' submission that breaches of confidentiality were serious and, without the procedural irregularities, the Adjudication Panel could and should have found misconduct. That being the case, it would then have considered current impairment and may then have imposed a sanction. Not to find misconduct was unduly lenient.
55. The Panel noted the observations made by the Court in *CHRP v Ruscillo* and concluded that a failure to make a finding of misconduct could be regarded as unduly lenient. The Panel accepted the principle that client-confidentiality was at the heart of the psychotherapy profession. This is made explicit in Paragraph 5.1.1 of the ISG as set out above. The Panel therefore concluded that breaches of these parts of the Code were serious and ordinarily would result in a finding of misconduct.
56. The Panel considered why no finding of misconduct was made by the Adjudication Panel, but it derived no help from the reasons given. The Panel therefore considered whether there were any extenuating circumstances that mitigated the seriousness of the facts found proved so as to justify a finding of no misconduct. The Panel noted that the Registrant had breached the Code on three occasions: he made insufficient inquiry regarding the propriety of disclosure, he disclosed more than was requested of him and, he contested the case before the Adjudication Panel.
57. The Panel found that there was little or no reason to mitigate the seriousness of the conduct. It concluded that the conduct found proved did fall far below the standards expected of a Registered practitioner and that other practitioners would find the conduct deplorable. As such, the decision of the Adjudication Panel not to find misconduct was unduly lenient.

## **Determination on Misconduct**

58. Having concluded that the Adjudication Panel's decision not to find misconduct was both unsafe and unduly lenient, the Panel then went on to consider this issue afresh in accordance with Rule 7.23 of UKCP's Complaints and Conduct Process. In addressing this question, the Panel considered the facts found proved by the Adjudication Panel, the submissions made on behalf of the Registrant at the Adjudication hearing and the submissions made by Mr Stevens.

59. The Panel accepted the advice of the Legal Assessor as to the approach it should adopt in considering the question of misconduct. The Panel recognised that the question of misconduct is a matter of independent judgement and is not a matter of proof for the parties.
60. In addressing whether the facts proved amounted to misconduct, the Panel had regard to the comment by Lord Clyde in *Roylance v. General Medical Council [2000] 1AC 311* that:  
*“Misconduct is a word of general effect, involving some act or omission which falls short of what would be proper in the circumstances. The standard of propriety may often be found by reference to the rules and standards ordinarily required by...a practitioner in the particular circumstances.”*
61. In addition, the Panel considered comment from the cases of *R (Calhaem) v GMC [2007] EWHC 2606* and *Nandi v GMC [2004] EWHC 2317* both of which characterise misconduct as a “serious” breach of standards or a “serious falling short” of the standards expected of a registrant. The Panel also considered whether other registrants would regard the breaches found proved to be “deplorable”
62. Having found that confidentiality was central to the practice of psychotherapy, the Panel concluded that breaches of this part of the Code were (in the absence of special circumstances) to be regarded as serious. Looking at this particular case, the Registrant had breached the following Codes: 3.1, 3.2 and 3.3.
63. The Panel accepted that the Registrant did not set out to deliberately breach the Code but fell into error through not knowing and not investigating his duty of confidentiality. Nonetheless, the Panel was satisfied that given the central importance of confidentiality, such breaches were serious and fell well below the standards expected of a registered practitioner. For the same reason the Panel was of the view that other practitioners would find such conduct to be deplorable. The Panel concluded that the Registrant’s conduct did amount to misconduct.
64. Having concluded that the conduct found proved did amount to misconduct the Panel went on to consider the issue of current impairment.

### **Determination on Impairment**

65. In considering impairment the Panel reminded itself that this was an issue of judgement taking account of factors such as the seriousness of the misconduct, public perception thereof, the

time elapsed, the attitude, learning and insight shown by a practitioner, and the overarching objective of public protection.

66. The Panel noted Mr Stevens' submissions, including the fact that an error may not be intentional does not necessarily diminish its seriousness. Most importantly the issue of insight was relevant to the risk of repetition.

67. The Panel considered 'insight' to be the ability of a registrant to step back from what has occurred to analyse any adverse findings and, recognise and address the risks that may flow from those failings.

68. The Panel noted that insight is not necessarily to be equated with an acceptance of wrongdoing. A registrant who contests a hearing may still accept an adverse finding and address the risks that flow from it. It was thus important for the Panel to consider the risks indicated in this case and whether there was any evidence to demonstrate that the Registrant had addressed those risks.

69. The Panel considered the approach as set out by Dame Janet Smith in the 5<sup>h</sup> Shipman Enquiry to be most helpful in determining the question of impairment. The Panel therefore posed the following question to itself:

*"Do our findings of fact in respect of the [Registrant's] misconduct, .... show that his fitness to practise is impaired in the sense that he:*

- (i) Has in the past acted and/or is liable in the future to act so as to put a patient or patients at unwarranted risk of harm; and/or*
- (ii) Has in the past brought and/or is liable in the future to bring the ... profession into disrepute; and/or*
- (iii) Has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the ... profession; and/or*
- (iv) Has in the past acted dishonestly and/or is liable to act dishonestly in the future.*

70. Having found misconduct based upon serious breaches of the code the Panel concluded that the answer to the second and third questions was yes. The Registrant had breached a fundamental tenet of confidentiality and had thus brought the profession into disrepute.

71. As to the risk of repetition, the Panel took full account of the Registrant's good character and long experience but, it also noted that he had contested the breaches found proved. In

addition, the Panel had seen no evidence of insight or learning to address the failings found proved. As such, the Panel could not dismiss the risk of repetition and concluded that a risk remained. Bearing these factors and the overarching objective in mind, the Panel concluded that the Registrant's fitness to practise was currently impaired.

72. The Panel was not satisfied that any patients had been put at risk of harm. Dishonesty was not an issue in this case.

### **Determination on Sanction**

73. In accordance with rule 7.25 of UKCP's Complaints and Conduct Process, the Panel next considered the question of sanction.

74. In his submissions on behalf of UKCP, Mr Stevens emphasised the importance of public protection, the ISG and the principle of proportionality. He observed that the purpose of sanctions was not to punish the Registrant, but to protect patients, the public, and the wider public interest of upholding standards.

75. Mr Stevens urged the Panel to consider sanctions in ascending order. He submitted that the Panel may take account of the fact that this case involved a discrete incident or incidents rather than continuing conduct but that the lack of insight remained a concern. He submitted that due to the lack of insight and remediation, demonstrated by the Registrant's attitude to the continued proceedings, the case may merit a sanction greater than a warning. He emphasised that these were matters entirely for the Panel to consider.

76. The Panel accepted the advice of the Legal Assessor.

77. The Panel recognised that the purpose of any sanction is to protect the public, the public interest and not to punish the Registrant. The public interest includes the maintenance of public confidence in the profession and the declaring and upholding of proper standards of conduct and behaviour within the profession. The Panel recognised that any sanction must be proportionate, weighing the public interest against the interests of the Registrant. The overarching objective may be achieved by support, guidance and learning to ensure safe practice just as much as by more severe sanctions.

78. The Panel considered the sanctions available to it under rule 7.25 of the Complaints and Conduct Process in ascending order and was mindful that any sanction imposed should be



the minimum to meet the risks in this case and should be proportionate and appropriate in all the circumstances of this case.

79. The relevant circumstances include the fact that the events were a one-off instance; the reason for disclosure (a police request) was highly unusual; the Registrant had disclosed more than was requested by the police; the Registrant did not act in bad faith; the Registrant had made an informal apology, but he had contested the case and had not engaged in the appeal process.
80. The Panel found that whilst the request to disclose information came from the police, the Registrant did not appear to know how to balance his duty of confidentiality against any perceived duty to the police. He made little effort to properly inform himself. This was not a case involving a vulnerable adult or child in danger, nor did it involve circumstances such as homicide or terrorism which may require disclosure irrespective of the duty of confidentiality.
81. The Panel found that the Registrant acted through ignorance rather than in bad faith. Nonetheless there had been an improper disclosure of personal information. While the Registrant made some limited admissions, he had contested proceedings and had withdrawn from the current process. The Panel had little or no evidence of insight and no evidence of remediation.
82. Conversely, the Panel noted that the Registrant was of good character and a long-standing practitioner. In view of his experience the Panel concluded that he should be capable of insight. The Panel concluded that public confidence in the profession would be undermined if no action was taken. The Panel therefore concluded that a sanction was appropriate and proportionate.
83. In view of the Registrant's long service and good character the Panel considered that, in the round, this was a singular event for which the Registrant was ill-prepared. Whilst the Registrant's good character suggested the risk of repetition may be low, his lack of insight and engagement and the lack of any training or remediation suggested the risk may be higher. In view of this the Panel concluded that there was at the least an appreciable risk, but it was one that could in principle be addressed through training and support rather than any more severe form of sanction. The Panel therefore considered the sanctions in ascending order with this in mind.
84. The Panel considered the following sanctions:

- a. **Written Apology:** This should be from the Registrant to the Complainant but provided to UKCP for UKCP to forward it to the Complainant. The Panel regarded this as an appropriate sanction since it would require the Registrant to reflect upon what had occurred and upon the disciplinary process. It would require him to confront and acknowledge his failings and would be the first step toward remediation thereof.
- b. **Warning:** The Panel considered that a formal letter from UKCP would reinforce the seriousness of the case thereby building upon the potential for insight. It would leave the Registrant in no doubt that any recurrence would be considered serious. As such it would be a form of protection to the public.
- c. **Further training:** Given the Panel's finding that a lack of knowledge and understanding was central to the Registrant's misconduct, training and support would provide protection to the public whilst allowing him to continue in practice.
- d. **Written Report:** Following completion of the training as described in c, the Registrant to submit a written report to UKCP.

85. The Panel considered that the above combination of sanctions was appropriate and proportionate to this case. Collectively they met the overarching objective since they addressed the risks identified in this case but would permit the Registrant to improve his practice and better serve his patients. The Panel did consider more serious sanctions but concluded that their imposition would be disproportionate to the risk and unnecessarily punitive.

86. Concerning the issue of further training, the Panel considered that the Registrant should within six months from today's date undertake training with an accredited body in the following areas:

- (i) client confidentiality
- (ii) data protection and the duties under the General Data Protection Regulations
- (iii) the management of client data

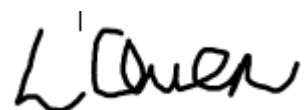
Collectively these should cover the following:

The meaning of confidentiality in psychotherapy; the limits of confidentiality in psychotherapy; legal requirements to report; response strategies to requests for information from the Police, courts and other statutory bodies; the application in practice of the UKCP Code of Ethics as regards confidentiality; responsibilities under GDPR; informing your client verbally and/or in writing of the limits of confidentiality and your documentation of the same; what processes are in place in organisations (and your own organisation) to ensure that the meaning of

confidentiality and the exchange of information if and when required is uniform and conforms to the current law? The effect of breaches of confidentiality for the client and the standing of the profession.

87. The Registrant is to advise his own college (CPJAC) within the UKCP of the training he proposes to attend and seek their approval.
88. The intended learning outcome is that by the end of the training the Registrant will have the appropriate knowledge and understanding of confidentiality and its application in his field of practice.
89. The Registrant is to provide a reflective report to UKCP setting out the knowledge he has acquired from the above training and how his practice has changed as a result. It should include any academic references and any certificate(s) provided by the training body. It should specifically address the question of insight into his failings as set out in this determination.
90. The Panel determined that no lesser sanction than the above apology, warning, training and report would meet the seriousness of this case, protect the public or meet the wider public interest.
91. The sanction shall take effect from today's date and must be completed within six months.
92. There is no right to appeal this decision.

Signed Appeal Panel Chair

A handwritten signature in black ink that reads "L Owen". The signature is written in a cursive style with a small vertical mark above the letter 'i' in "Owen".

Linda Owen

14 December 2021