Neutral Citation Number: [2025] EWHC 1628 (KB)

Case No: KB-2023-003302

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27 June 2025

Before :

Rory Dunlop KC

- -

Between :

NEALE HADDON	**Claimant**
- and -	
UNITED KINGDOM COUNCIL FOR PSYCHOTHERAPY	**Defendant**

- -
- -

Simon Butler and Atanas Angelov (instructed by **BSG Solicitors**) for the **Claimant**
Farrah Mauladad KC (instructed by **Clyde & Co**) for the **Defendant**

Hearing dates: 7 June 2025

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APPROVED JUDGMENT

This judgment was handed down remotely at 10:00 am on Friday 27 June 2025 by circulation **t**o the parties or their representatives by e-mail and by release to the National Archives.

Rory Dunlop KC, sitting as a Deputy High Court Judge :

Introduction

1. The Claimant is a psychotherapist who was registered with the Defendant, the United Kingdom Council for Psychotherapy ("UKCP"), from 2002 until that registration was terminated, in the circumstances set out below. He brings a claim against the Defendant for breach of contract. The claim focuses on two decisions: the decision of the Adjudication Panel to remove the Claimant from the UKCP register, and the subsequent decision of the Appeal Panel to uphold that removal.

2. The Claimant was represented at the hearing before me (as he was in the proceedings before the panels of the UKCP) by Simon Butler. The Defendant was represented by Farrah Mauladad KC, who did not appear before either of the panels of the UKCP. I am grateful to each of them for their clear and succinct submissions. Their efficiency enabled us to conclude a hearing, listed for 2 days, in one day.

3. I heard live evidence, very briefly, from the Claimant. He was cross-examined in relation to his relationship with Dr Wilkinson. Nothing came out of that cross-examination that added materially to the documentary evidence and so I say no more about it.

The contract

Express terms

4. The parties at all material times had a contractual relationship. They agree that the express terms of the contract included: the UKCP Ethical Principles and Code of Professional Conduct (2009), the UKCP Code of Ethics and Professional Practice (2019), the UKCP Complaints and Conduct Process (May 2022) (“CCP”), and the Indicative Sanctions Guidance (2019) (“ISG”).

5. The CCP made provision for how proceedings before an Adjudication Panel should take place. It provided at para. 7.5 that 'no later than 28 days before the hearing' the parties should provide the Secretary of a 'list of the names of the persons they propose to call to give evidence'.

6. The ISG provided as follows:

> *"**3.8 Suspension Order***
>
> *3.8.1 A suspension order directs the UKCP Registrar to suspend the Registrant's membership for a period of up to twelve months. A Registrant who is suspended cannot practise psychotherapy under the auspices of UKCP.*
>
> *3.8.2 Suspension from the Register is a deterrent and may be used to send out a signal to the Registrant, the public, and the profession about what is regarded as behaviour unbefitting a member of UKCP and the wider psychotherapy profession. However, suspension from the Register has a punitive effect in that it prevents a Registrant from earning a living as a psychotherapist during the period of suspension and therefore a panel must carefully balance the interests of the Registrant with its duty to protect the public.*
>
> *3.8.3 Suspension may be appropriate where a panel considers that there are not appropriate workable conditions to remedy the Registrant's shortcomings and to provide sufficient protection to the public, but it is probable that repetition will not occur and therefore striking off is not appropriate.*
>
> *…*
>
> ***3.9 Termination of UKCP Registration***

3.9.1 Termination of registration with UKCP means that a Registrant's name is removed from the UKCP Register and they are prohibited from practising psychotherapy under the auspices of UKCP. The Registrant's College and/or Organisational Member will be expected to also remove their association with the Registrant, and any relevant employers (such as the NHS) will also be informed.

3.9.2 Termination of registration is a sanction of last resort for serious, deliberate, or reckless acts involving abuse of trust (such as sexual misconduct), dishonesty, or persistent and irreparable failure. Termination of registration should be used when the panel considers there no other way to sufficiently protect the public or there is an unwillingness by the Registrant to show insight or resolve their failings.

3.9.3 Termination of registration may also be appropriate when there is no other way that public confidence in the profession can be maintained if the Registrant is permitted to remain on the Register. When termination is used to address public protection issues, panels must clearly state their reasons for doing so. Termination of registration is a long-term sanction and a Registrant cannot apply to be readmitted to the Register for a period of three years. Further guidance on the restoration of registration can be found within section 11 of the UKCP Complaints and Conduct Process.

…

5.4 Sexual Misconduct

5.4.1 UKCP's code of ethics is very clear that a Registrant must not enter into a sexual relationship with a client. Sexual misconduct seriously undermines public

confidence in the profession and represents a breach of one of the fundamental tenets of psychotherapy.

5.4.2 Sexual misconduct is considered particularly serious where the person concerned is particularly vulnerable and there has been an abuse of the special position of trust that the Registrant occupies.

5.4.3 In all cases of sexual misconduct it is extremely unlikely that a sanction less than suspension from UKCP's Register will be sufficient, although it is likely that most cases will result in termination of UKCP registration. If a panel imposes any sanction other than termination of registration it needs to be particularly careful to explain the reasons for doing so in a way that can be understood by those who have not heard all of the evidence.

5.4.4 In instances where the sexual relationship was with a former client, the panel must consider how much time has passed since they were a client of the Registrant; whether they would be considered vulnerable at the time the relationship commenced; whether the relationship has been detrimental to their mental health and well-being; the source of the complaint; and whether the Registrant abused their position by entering into a relationship with their former client. The code of ethics does not stipulate how long is an appropriate passage of time before it would be considered appropriate for a Registrant to commence a personal relationship with a former client. This is a matter for the panel to decide based upon the submissions of both parties and the evidence before it; however as a general rule, the longer the therapeutic relationship, the longer passage of time is necessary to ensure proper closure has been achieved.

5.4.5 In deciding whether a suspension or termination is the appropriate sanction, a panel must consider:

- The vulnerability of the person concerned;

- Whether the sexual contact was voluntary;

- Whether the misconduct was a one off incident or prolonged over a period of time;

- Whether the misconduct was part of a course of deliberate action;

- The likelihood of repetition;

- Whether the Registrant has insight to their failings and has taken steps to address these failings; and

- The danger to the public posed by the Registrant if they were permitted to recommence practicing."

Implied terms

7. The parties agreed that terms should be implied into the agreement as to how the Adjudication Panel and the Appeal Panel should exercise their powers.

8. The Particulars of Claim stated that the implied terms were, in essence, that the Defendant must exercise its powers (1) rationally (in the sense in which that expression is used in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223) and (2) fairly (i.e. in accordance with natural justice). The Defence admitted the former implied term but not the latter. Helpfully, in the hearing before me, Ms Mauladad KC expressly accepted, on behalf of the Defendant, that it was an implied term that the Defendant should exercise its powers in accordance with natural justice.

Factual Background

The Claimant and Client A

9. Between 15 August and 28 November 2018, the Claimant conducted ten sessions of Cognitive Behavioural Therapy ("CBT") with Client A. Client A gave no evidence to the UKCP or to me. The evidence I have, as to why Client A sought CBT and what the treatment involved, comes principally from the Claimant. Client A was referred to the Claimant by an insurance company to treat a driving phobia that had emerged following a road traffic accident. The Claimant's notes record that *"treatment sessions focused on travel anxieties and mood disturbance exacerbated by underlying general anxiety disorder, life stressors and chronic pain. Discussed formulation of anxiety/panic symptoms and trauma related problems…".*

10. On 28 November 2018 treatment was paused. I am told that this was because the Claimant needed to take a break for reasons related to his health. Ms Mauladad KC told me that all of the Claimant's other patients were transferred but Client A chose to wait for the Claimant's return. The notes of the Claimant's interview, with the person conducting the investigation on behalf of his employer, record the Claimant as saying that Client A was '*an attractive woman*' and '*When she decided to wait for me to come back to work, I did feel that this was a 'hook' for me. This was someone that had waited for me… I had in mind meeting up with her for a coffee, perhaps in 6 month's time – but events overtook me*.'

11. The Claimant returned to work and began seeing Client A again from August 2019.

12. In or around December 2019, during what was to be the penultimate session, Client A asked the Claimant whether he found her attractive. The Claimant later gave evidence about this: *"…that was a very out of the blue question… I was trained to use self-disclosure, not to lie to clients - I wouldn't have said to her that that wasn't*

the case - but as I was thinking how to respond, obviously, I did blush, and she could see that, and she said to me, 'I can see the answer to that question' .

13. On 18 December 2019, the Claimant and Client A had their final therapy session. The Claimant later said, in an interview with his employer, that during this final therapy session the Claimant asked him to meet up for a coffee or Christmas drink. The Claimant said that he replied: '*No, we can't meet up for a while'*. At the end of the session, Client A asked the Claimant for a hug and he agreed. They hugged. The Claimant's notes, after the conclusion of therapy, recorded that Client A '*reported significant recovery from travel and driving phobia, including being able to now drive on busy motorways and urban roads, with only residual or no anxiety*'.

14. On 28 December 2019 (i.e. 10 days after the final session), Client A sent a text to the Claimant proposing a meeting. The Claimant accepted that proposal. A sexual relationship commenced on or about 30 or 31 December 2019 and continued until June 2020, during which time the parties exchanged explicit communications and images.

15. There is evidence that the Claimant sought advice in peer supervision about whether to have a sexual relationship with a client. It is not clear, from the evidence before me, when exactly the Claimant sought that advice. In the letter dated 14 October 2021 from the Claimant's employer, it is recorded that the disciplinary panel '*heard that you had explored the ethics of having a relationship with [Client A] with peers in private practice <u>before the last therapy session</u>…*'. The record of the interview of the Claimant, during the NHS investigation, had not been clear as to the date when the Claimant spoke to his peers. It may be that the panel received other evidence on this issue, at the hearing before them. In any event, what is clear, from the Claimant's own evidence, is that his colleagues warned him against having a sexual relationship with Client A and he ignored their advice.

16. The sexual relationship between the Claimant and Client A lasted approximately 6 months. They met several times, normally at the Claimant's flat and once in his car. On each occasion they engaged in intimate relations. They exchanged naked and sexual images and had phone and video sex. The sexual relationship ended in June 2020 when Client A informed the Claimant that she was having chemotherapy.

17. The Claimant did not hear anything further until January 2021 when Client A contacted him to ask about providing therapy to her son, who suffered from anxiety. In the end, the Claimant did not provide therapy to Client A's son.

18. On 12 March 2021, Client A's partner ("DE") discovered communications between Client A and the Claimant. Client A admitted to DE that she had had a sexual relationship with the Claimant.

19. On 14 March 2021, DE submitted reports concerning the Claimant to the Defendant and other bodies. The Defendant imposed an Interim Suspension Order. The Claimant's other regulator, the BABCP, adopted that decision.

20. In April 2021 the Claimant engaged the services of Dr Wilkinson to engage in mentorship work. Dr Wilkinson is an eminent psychotherapist of 30 years standing. He has been, among other things, chair of the Defendant's Humanistic and Integrative Psychotherapy College. In the same month, the Claimant also attended an online training course in 'Maintaining Professional Boundaries' provided by 'The Clinic for Boundaries Studies'. This was the first of several such courses the Claimant attended.

21. The Claimant's employer conducted an investigation into DE's complaints. While the investigation was carried out, the Claimant was suspended from client-facing duties. During the investigation, the investigating officer spoke to the Claimant, Client A and others.

22. On 4 October 2021 the Claimant provided a submission to his employer for the disciplinary hearing due to take place on 7 October 2021. In that submission, he accepted that his judgment in relation to Client A was 'questionable'.

23. On 7 October 2021, the Claimant's employer conducted a disciplinary hearing to consider the allegation that the Claimant had engaged in a sexual relationship with a former private client. In a telephone conversation on 8 October 2021, Ms Hutton, a general manager, informed the Claimant of the outcome – saying the allegation was upheld and they had significant concerns in the Claimant's ability to '*safely and effectively'* perform the role of Clinical Lead but that, as an alternative to dismissal, they could offer the Claimant the role of '*Band 7 CBT Therapist'*, which would not require him to supervise others. The Claimant accepted this offer.

24. In a letter dated 14 October 2021, Ms Hutton wrote to confirm the outcome of the disciplinary hearing and the contents of the telephone conversation of 8 October 2021. She said that the suspension would be lifted, he could return to work, in a lower role, as a '*Band 7 CBT Therapist*' post. The letter added that '*Interim arrangements may need to be confirmed while your suspension with [the UKCP and BABCP] is addressed. Should your suspension continue or become permanent then further formal processes may be required and there would be a final written warning in place for 12 months.*' As it happened, although the UKCP terminated their interim suspension, the BABCP did not (see below). The effect of the BABCP interim suspension remaining in place was that the Claimant did not return to a client-facing role. Instead, he worked in what he described, in a witness statement, as a '*non-clinical role'*. However, I think it reasonable to infer from the letter of 14 October 2021 that the intention and expectation of his employer, after having completed their investigation, was that the Claimant would return to a client-facing role as a therapist. The letter does not record any reasoning as to why the Claimant's

employer decided this was appropriate. However, I think it can reasonably be inferred that the Claimant's employer did not consider that the Claimant posed a significant risk to patients.

25. In a '*statement of learning for UKCP'* dated January 2022 the Claimant said that over the last 11 months he had had much time to reflect and process what happened. He said this event '*seems so out of character with the rest of my 20+ year career as a psychotherapist'*. He said he was ashamed and sorry to Client A, DE and their family. He said he was sorry for the impact on clients, supervisors, colleagues and the reputation of the profession. He said that at the time this happened, he thought it would be OK to begin a sexual relationship with this particular client after the sessions ended. He said that he could now see that his judgment at the time was wrong. He said that Client A's interest and '*assertive requests to meet*' were '*red flags of a transferential process'*. He said he should have refused to meet and held a '*firm and clear boundary'* when she asked if he found her attractive. He said '*in my role as a psychotherapist, I alone was responsible for saying No*'. He mentioned that at the time he was going through a period of depression due to chronic pain. He said it was a '*one off event in a twenty-year career'*. He said he was deeply sorry and knew it would never happen again. He said, through reflective and development work, he had a '*deep understanding of the potential pitfalls and warning signs which would prevent any boundary transgressions in the future'*.

26. The Claimant provided a witness statement, 31 January 2022, for an Interim Orders Panel ("IOP") hearing before the UKCP. He exhibited certificates from the courses he had attended. He also exhibited a 5-page development plan he had developed with Dr Wilkinson. He said he recognised and accepted his own '*role and*

responsibility' in entering into sexual relations with a former patient, as well as the impact this hand on her, her family and the reputation of the profession.

27. The 5-page development plan was detailed, identifying situational risk factors and what action he would take in relation to them. One of the areas addressed in this plan was '*power differential in therapist-client relationship*'. In relation to this he said he would *'monitor and regularly review'* any '*slippage of recognition and awareness of power differential'*. The first of the key learning points he said he had learned was '*remembering the power differential is always present between the therapist and patient' and it is 'the therapist's responsibility to hold boundaries'*.

28. On 4 February 2022 the IOP reviewed and discharged the interim suspension order. They said they were able to give weight to Dr Wilkinson, the Claimant's mentor, who had *'spent a considerable amount of time'* with him and assessed him as not having '*predatory or recidivist propensities'*. They also noted the work he had undertaken attending courses. They expressed the view that the Claimant had '*developed insight and … demonstrated that he has done so*.' They considered that the risk of repetition between then and the substantive hearing was 'low'.

29. However, the BABCP did not amend their suspension, to reflect this change by the UKCP, and so the Claimant remained in a non-clinical role.

30. On 14 November 2022 the Claimant provided a Reflection Statement (which was, for reasons that are unclear, initially omitted from the bundles before me). He said that public trust in the professional standards of psychotherapy was vital. He said that, at the time, his personal power '*felt diminished'* and he '*lost sight of the inherent power differential between professional and client*'. He then identified different forms of power, including but not limited to coercive power, and rejected '*the accusation'* that he had used coercive power with any of his clients. He said that

'*from a virtue ethics perspective'*, if he had acted with courage he would have said 'No' when Client A asked to meet up again socially after the end of their sessions. He said that "*rather than 'courageously' holding a firmly closed door I chose to be seduced over the boundary into more intimate relationship*.' He referred to his '*hubris and isolation'* at the time and how his relationship with his partner at the time had ended due to his illness. He said he had become complacent and not noticed how isolated he had become. He said what happened felt like a '*perfect storm'*. He said he was now far more aware of the pattern of '*counter dependency'* he had fallen into at the time. He said he had identified and put in place measures to ensure this '*lapse in judgment'* never happens again, such as talking to others, self-care, self-reflection (medication, morning pages, diet, exercise, sleep), seeking self help and being organised. He said he was aware of the warning signs which '*led to my transgression'*, including emotional avoidance, hubris ('*know it already & blame others attitude'*), isolating (shame-hiding), not taking action. He said he could state with certainty that he would '*never again'* put himself in a position to '*breach boundaries*'.

The allegations and documentary evidence before the Adjudication Panel at the start of the hearing

31. In November 2022 the Defendant's Adjudication Panel held a hearing. Some allegations were withdrawn at the start of the hearing. The live factual allegations against the Claimant at the beginning of the hearing were as follows:

"…

2Whilst being in a therapeutic relationship with Client A between August 2018 and December 2019

…

(b) you hugged Client A.

…

3. On 28th December 2019 you:

a. Engaged in flirty text messages with Client A.

b. Agreed to meet Client A at your home.

c. Accepted a LinkedIn request from Client A.

4(a) On 30th or 31st December 2019 you entered into a sexual relationship with Client A.

5. On 11th January 2020 you sent a text message to Client A stating: "Still put. About to go home. Wish you were in my bed when I get there. I have fallen for you, bit you already knew that. Xxx (sic)"

6. On unknown dates between December 2019 and June 2020:

a. Engaged in flirty text messages with Client A.

b. Was in a sexual relationship with Client A.

c. Engaged in telephone sex with Client A.

(d) Sent and received nude pictures from Client A.

(e) Discussed having sex with Client A's friend while Client A was present.

7. Engaged in the above actions despite your supervisor who had previously assessed Client A warning you to be careful, that it was a grey area and not to do anything that may jeopardise your career.

…

9. In January 2021 proposed a date of 27 January at 18:00 to meet Client A's son for his anxiety and panic attacks

10. Offered to meet with Client A's son following the conclusion of your sessions with Insight

32. Each of these allegations was admitted.

33. Allegation 11 was that the Claimant's actions above were inappropriate and unprofessional. This was admitted for allegations 3-7 only.

34. Allegation 12 was that the Claimant's actions at 1-6 above were sexually motivated. This was admitted in respect of allegations 3-6 only.

35. The Defendant further alleged that the behaviours set out above were in breach of the UKCP Ethical Principles and Code of Professional Conduct (2009) and (2019).

36. The issues for the Adjudication Panel to resolve were:

    i) Whether the hug (allegation 2b) was sexually motivated, inappropriate, and/or unprofessional.

    ii) Whether offering to meet with Client A's son (allegations 9 and 10) was inappropriate and/or unprofessional.

    iii) Whether the Claimant's fitness to practise was impaired by reason of misconduct.

    iv) If so, what sanction if any to impose.

37. The Claimant produced a witness statement, dated 31 October 2022. He said he had committed to learning from the situation and ensuring it never happens again.

He said he had used the time to reflect on his past conduct and had '*come to terms with being accountable*' for all that happened. He said that he was truly sorry for the impact his actions had on Client A, her family and the reputation of the profession. He produced a bundle with '*substantial evidence of the actionable steps I have taken'* to demonstrate insight in order to demonstrate that he posed no risk.

38. The Claimant's bundle of evidence included the following evidence from Dr Wilkinson, his mentor:

i) A letter dated 18 July 2021 addressed '*To Whom It May Concern'*. In that letter Dr Wilkinson said that there were, broadly, two kinds of '*sexual transgression and boundary infraction: those who lapse because of inadequate addressing of their, in the broad sense, countertransference processes, and who are clearly able to learn, and those who are serious recidivist whose behaviour will not change as a result of self examination*.' Dr Wilkinson said "*I am entirely clear in my own mind and experience that Neale falls into the first category".* He also stated that Client A was "*a resilient individual who invited the relationship with eyes open. This relationship definitely short-circuited the therapeutic process… but was not an encounter which constituted a danger to the public*".

ii) A letter dated 27 January 2022 '*To Whom It May Concern'*. In this Dr Wilkinson states "*I believe and am convinced, in my own mind and experience, that having known Neale during this period of mentorship, but having previously met him as a colleague some years ago, this was a one off incident*.'

iii) A letter dated 25 October 2022 '*To Whom It May Concern'* Dr Wilkinson says "*some of this material covers similar points as my previous report: this is an*

update". He outlines the work the Registrant had undertaken studying the philosophical bases of ethics which led him to Virtue Ethics. He says, "*I am therefore certain that he is in no way a danger to the public*" .

39. The Claimant also provided testimonials from friends and several colleagues. The colleagues each spoke very highly of the Claimant. Many of them expressly said that they would continue to recommend the Claimant, despite being aware of the allegations. Several spoke of his ability to reflect on mistakes and change – e.g. that he was '*genuinely self- reflective in his approach'* and that he was *'open to reflecting and learning from mistakes'*.

40. The Claimant also provided several certificates of courses he had completed – Values in Practice, Probity & Ethics in Practice, Information Governance, Professional Ethics for Helping Professions, Maintaining Professional Boundaries.

41. The Claimant also provided the '*statement of learning'* and personal development plan which he had provided to the UKCP's Interim Orders Panel.

The hearing before the Adjudication Panel – Day 1 and fact-finding

42. Having withdrawn some allegations, Mr Stevens, counsel for the Defendant, opened the case. He said the following in relation to the hug:

> *"The reason for that allegation, in overview, Madam, is that [the UKCP] acknowledge, in isolation, the act of hugging a client may well be entirely innocent. There may be reasons other than sexual motivation for it. It's the context in which that hug was given that is of particular importance. Here, the [UKCP] submits, such context should not be ignored, and when one considers it, it decidedly points towards the conclusion that the motivation behind that hug, in fact, was sexual gratification, because the [UKCP] will be inviting the*

committee to conclude that, at the point that that hug was given at the end of the therapy sessions, based on the Registrant's evidence alone, what it is that he has served about his relationship with Client A, it is clear that there was a strong sexual attraction from the Registrant towards Client A. So the content in which the hug was given is of importance, and in due course, Madam, you will be invited to consider evidence that there was a strong sexual attraction, and here, of note, Madam, the committee will be invited to consider the fact that, but two weeks later, after this final treatment session, the Registrant accepts that he entered into a sexual relationship with Client A."

43. The Claimant was then called and cross-examined. The transcript of the cross-examination about the hug included the following:

"*Mr Stevens: So there was nothing untoward, nothing different about this?*

Neale Haddon: I mean, hugging is - you know, the way I was trained in humanistic therapy was to use touch and hugging as part of the normal process of psychotherapy. It's usual for me to accept hugs from clients, particularly at the end of therapy. There are considerations about hugging in terms of how comfortable a therapist is with that with a particular client, and the particular client themselves. So, you know, particularly for vulnerable clients it's maybe not advisable. For other clients it is, but particularly at the end of therapy. I mean, I understand in the context of how this has panned out, of how this moment looks, but, because it was right at the end of the therapy, and because she requested the hug - I wasn't expecting to see her again - I felt it would have been more rude not to accept it, really.

…

Mr Stevens: So, she's been flirting with you prior to this hug. You had formed a view that she's attracted to you, and you're attracted to her. Was it not, in those circumstances, therefore, inappropriate for you to have hugged her in those circumstances?

Neale Haddon: I did wonder that for a long time. Obviously, I've had 20 months to process all this, and review and reflect, and take remedial action, but it's not something I would normally do, to refuse... I think if we'd have continued the sessions, then, in hindsight, I should have behaved differently, but right at the end, the conclusion of therapy, I don't... I didn't expect to see her again.

Mr Stevens: I'm partly asking the question, Mr Haddon, again, I'm drawing from what you yourself previously said about this specific incident, and you said that it was a stupid thing to do.

Neale Haddon: Yes, I did think that for a long time, and in hindsight, if I'd known what I know now, I wouldn't do that.

Mr Stevens: Right. So if you thought it was a stupid thing to do at the time, when you were asked about this, do you maintain it was a stupid thing to do?

Neale Haddon: No, at the time I didn't think it was a stupid thing to do. I did go for a period where I was reflecting on all my professional boundaries, and particularly the way I've been trained to be comfortable with hugging clients, and to be comfortable with self-disclosure, and really reeled that back, and now, I don't think that was the problem. I think the problem was not being really clear with her that we couldn't meet up after the conclusion of therapy. Then, if I'd have said that, when she asked for a hug, a hug at the end of therapy would have just been a hug at the end of therapy.

…

Mr Stevens: But my question is, do you accept that you failed to show temperance and restraint during that final therapy session in hugging her, against the backdrop that we've explored, that you shouldn't have done that, and actually, what you gave way to was your sexual attraction and a desire for sexual gratification?

Neale Haddon: I regularly hug clients when they ask, particularly at the conclusion of therapy. That's not an unusual thing. I think what I would most do differently in that final session, when she asked me if we could meet up for a Christmas drink and I said, 'No, at least not for a while,' the at least not for a while was the bit I should have done differently. I should have said no.'

44. The Claimant later accepted in cross-examination: '*I had lost sight of the inherent power differential. I acknowledge that…'*

45. The Claimant was re-examined and then asked questions by the Adjudication Panel. One panel member, Ms Taylor, asked what a reasonable period of time would be before developing a relationship with an ex-patient. The Claimant said it depends on the patient. He said with Client A that, at the time he thought it was OK but he no longer thought it was OK.

46. A second panel member, Ms Iona, asked when there is not '*vulnerabilty'* in a patient. The Claimant said '*it's all relative'*. He said: '*I say more vulnerable, I mean the clients where there's an obvious power imbalance in terms of personal power, and in terms of all the rest of it. When I say that Client A was not vulnerable in that sense, I meant that she had charisma, and personal power, and expertise power. Not all clients would have that. It is relative. I recognise what you're saying. There was a vulnerability in terms of, you know, she came to me for therapy with a particular*

issue, which was driving phobia, and so there is a vulnerability there.' Ms Iona asked if the Claimant did not think '*there's always a power imbalance when someone seeks help from a professional that they don't have experience of*?' The Claimant responded: '*There's always the inherent power differential of, as a therapist, the therapist has power because it's their role. I did lose sight of that.'*

47. The Chair then intervened and said: '*I just want to follow on that particular point in relation to this power approach. We have a professional who's been trained, who is on a register, and you have a client who you've just said is vulnerable because they're coming to see you, at that point anyway. You've indicated that because in this case Client A had great charisma, and she appeared to be powerful in her role and all of that, you've outlined that... Are you saying when you make all those statements that the power is equal between a client and a therapist?*'

48. The Claimant replied:

> *'No, I'm not saying that. I'm saying there is an inherent power differential, and at the time I felt on a level with her, partly because of who she is as a person, but partly because, as I say, the main body of our work had been the year before, when we had ten sessions, and these sessions felt like checkins and question-and-answer sessions. It was therapy, but it wasn't anywhere near as in-depth as it had been.'*

49. Counsel for the Defendant then made further submissions. He submitted that the hug was '*an example of [the Claimant's] sexual urges getting the better of him, for want of a better word, and him acting for the purposes of sexual gratification in having that close physical contact that's involved in a hug'*.

50. Counsel for the Claimant then made submissions. He said the hug was '*innocent'* and it didn't make any difference that later the Claimant and Client A had a sexual

relationship. He said there was '*no evidence'* to support the submission that the Claimant at the time had a strong sexual attraction to Client A.

51. The legal assessor directed the Adjudication Panel that sexual motivation is an act done '*either in pursuit of sexual gratification, or in pursuit of a sexual relationship'*.

Day 2 – the findings on the allegations and the submissions on misconduct and impairment

52. The Adjudication Panel found all allegations proven. In relation to the hug, they found:

> *"47. Having considered all the evidence the Panel determined that to hug Client A was both inappropriate and unprofessional. The Panel was of the view that there were clear warning signs that should have put the Registrant on notice that Client A may have feelings toward him. He certainly had feelings toward her. It was incumbent upon him to maintain firm boundaries and to politely reinforce those boundaries. He could have done so by refusing her request but did not. His failure was both inappropriate and unprofessional.*
>
> *…*
>
> *54. In relation to Allegation 12 (sexual motivation) regarding allegation 2b (hug), the Panel noted that the Registrant said he was attracted to Client A including sexually attracted to her. Whilst he had not acted upon that attraction over the period of treatment, the Registrant described Client A as flirty and, toward the end of the treatment sessions asked him a personal and potentially intimate question. He blushed and she drew the conclusion that he did find her attractive, but he failed to rebut that. It was plain that there was a mutual attraction between Client A and the Registrant. and this included a sexual attraction.*

55. The Panel noted that the Registrant was sufficiently concerned about his feelings toward Client A and/or hers toward him, that he sought advice from a supervisor. The gist of the advice was to the effect that he should maintain boundaries. He was advised by his colleague who had previously assessed Client A to be particularly cautious in respect of her. He was also advised by his peer group supervision not to do anything that would jeopardise his career.

56. When describing his state of mind at the time he said that he did not expect to see her again however, he also conceded that he thought he might after a period of time – he was not sure but thought this might be some months. It was not at all clear to the Panel that he regarded the "hug and goodbye" as the end of their relationship. It was more likely the case that he hoped it was not and he had previously left that door open in that hope.

57. Whilst there may have been an element of saying goodbye, the Panel was satisfied that there was also an element of the Registrant wanting the hug and he did so because he was sexually attracted to Client A. The Panel was satisfied that he either derived some gratification from the hug or engaged in it to 'keep the door open' in pursuit of a future sexual relationship. He had a clear choice to respond differently but chose to hug her. Having received advice and having recognised his own sexual urges the Registrant ignored the advice and followed his urges.

58. Having come to that conclusion the Panel then considered the subsequent events to see if they supported or opposed such a conclusion. Having finished the final session on 18 December the Registrant was contacted by Client A over the Christmas period (28 December 2019). He admitted that he felt excited by this contact. At this time, and in the days that followed, he still had the opportunity to reflect and change course but rather than declining further contact

as he could and should have done, within days they had entered a sexual relationship. The contact by her and his excitement at this was only days after they had previously parted. Their relationship began only a few days after that. The Panel found the timescale to be important in that it seemed unlikely the Registrant's motivation had moved from 'entirely proper' to 'entirely improper' in little more than a week. The Panel found it more likely that the Registrant had held such a motive when he hugged Client A only days before. The Panel rejected the suggestion that this was a matter of 'reverse engineering', it was a matter of common sense in following the events as they unfolded."

53. The Adjudication Panel then heard submissions on misconduct and impairment. Counsel for the Defendant made the following submissions on impairment, risk of repetition and insight:

"[A] very significant swathe of the allegations faced by the Registrant have been admitted and there is clear evidence before you that he acknowledges wrongdoing. With that, the panel would be entitled to conclude that it would be inappropriate to categorise this as a case in which the Registrant has no insight into past failings. Clearly, there is evidence of insight, certainly in respect of a large number of the allegations that he faced. It's also right to acknowledge that not only has the Registrant acknowledged wrongdoing, but there's evidence before you of him actively taking steps to address it. There you will note, and I don't want to touch upon the territory of my learned friend, Mr Butler, and naturally he will go through this in more detail. But you will note there's evidence of what may be referred to as tailored CPD and going on courses and training and discussing matters with his peers, all focused on the question of professional boundaries. So, clearly, this is something that the Registrant has reflected long and hard upon and that of course is all to his credit, and all of

those are factors that the counsel acknowledge you're entitled to have and should have regard to when addressing the question of the risk of repeat. But balanced against that, Madam, the counsel invites this committee to conclude that you cannot preclude a risk of repeat in this case, notwithstanding all of that that I've alerted you to, and here in particular, Madam, we note that whilst the Registrant has admitted a significant number of the allegations that he's faced, he denied that he did anything that was sexually motivated whilst Client A is in effect being treated by him. Specifically, he denied that the hug that he provided to her during the course of a therapeutic session, be it at the end of it, but still importantly, whilst he was acting as his as her therapist, the counsel would submit, and she was very much his client. He denied that he'd done anything that was sexually motivated. Here, Madam, the counsel naturally notes what it is that the panel have found so far as your factual findings. In summary, the counsel acknowledge that the panel have noted a potential lack of understanding on the part of the Registrant as to the inappropriateness and unprofessionalism of providing a hug in this particular context, and furthermore not acknowledging that it was sexually motivated. Naturally that brings with it questions surrounding insight…"

54. Mr Butler made submissions on behalf of the Claimant. He submitted that the Claimant had developed insight and would not pose a risk of repetition. He referred to the reports of Dr Wilkinson.

55. The Adjudication Panel announced its decision that it found misconduct and impairment with reasons that would follow.

The Adjudication Panel decision on misconduct and impairment

56. The Adjudication Panel found that the Claimant had breached Clauses 1, 2, 4, 5, 6, 8, 9, 32 and 37 of the Code (§§78-82). In finding Clause 5 breached the Adjudication Panel said:

> *"80. the Panel concluded that there was indeed harm or the potential for harm. Client A was deprived of her therapist. Her son was deprived of a therapist. The Panel could not determine whether Client A's relationship broke down due to these events. It may be it was already rocky, it may be this is the real reason why she remained in therapy with the Registrant. If so, the Registrant colluded with Client A or took advantage of her feelings rather than treating her. If this was not the case, then his actions contributed to the breakdown and clearly harmed Client A's partner."*

57. The Adjudication Panel held that the Claimant had seriously failed to meet the standards of the profession and, therefore, was guilty of serious misconduct (§83 & §84).

58. The Adjudication Panel went on to consider the issue of impairment. They held that they '*could not exclude the risk of future repetition'*. In explaining this finding, the Panel said the following:

> *"91… It took full account of the Registrant's good character both in terms of propensity and veracity but, the Panel also noted that the Registrant had had the benefit of advice from a supervisor at the time he acted and this did not deter him. In addition, <u>when he gave evidence, despite the training undertaken and the references, it was not clear to the Panel that the Registrant had grasped the failure to be his</u>. He did not treat her as a client. He did not understand the need to keep boundaries in place to protect a conflicted client. <u>There appeared to be</u>*

little reference in the Registrant's reflective statements contained in Bundle R2 to the training and the learning outcomes that would affect his future practice.

92. The Panel was struck by the Registrant's continued assertions that Client A was flirty or made assertive advance and his phrase that he "chose to be seduced over the boundary". Such phraseology places the blame on Client A as does his assertion that he felt disempowered and saw her as empowered. It was not at all clear that even now the Registrant accepted his conduct was unprofessional and/or sexually motivated. The Panel noted the various certificates and the personal development it was said the Registrant had undertaken but, there was little or nothing in any reflective piece that set out the Registrant's understanding of that learning, how it had altered his practise and how this prevented recurrence.

93. The Panel acknowledged that the Registrant had shown some insight into his misconduct, but it was limited. The Registrant's continued suggestion of blame on the part of Client A and his failure to grasp that the fault was and remains with him left the Panel unable to conclude that there was no risk of repetition.

94. Whilst the Panel was told that the Registrant had suffered from issues concerning his mental health and was himself vulnerable, no medical or other professional evidence was provided to support this assertion. The Panel was thus unable to place much weight on this assertion.

95. The Panel considered the submission that the Registrant's employer and the Interim Orders Panel (IO Panel) had found no risk. The Panel was not convinced of either submission. First, the Registrant's employer had moved the Registrant to a non-client facing position to manage the situation pending

determination in the regulatory process. That was indicative of managing potential risk pending a decision and is quite different to asserting they had found no risk at all. As for the IO Panel whilst it had considered some of the papers, it had not had the benefit of hearing the evidence received by this panel." [Emphasis added]

59. Further, they held that a finding of impairment was justified to declare and uphold standards and maintain confidence in the profession (§97 - §98).

Day 3 and the decision on sanction

60. The Adjudication Panel reconvened on 10 February 2023 to consider sanction. In the meantime, the Claimant provided a further training certificate, dated 1 February 2023, and further evidence from Dr Wilkinson, i.e. a mentorship report, dated 31 January 2023. This report stated:

"I have previously prepared two reports detailing the work Neale and I did and stating my professional view of his personal and emotional growth since our first session. In these reports I expressed the professional judgment that Mr Haddon is not a danger to the public, and has learnt and continues to learn from his actions and experience… in my professional opinion additional supervision would be an effective means of addressing any remaining risks related to the conduct that brought him before the PCC."

61. Dr Wilkinson then outlined what the goals of supervision would be, and set out five "*major ones"*, and said that this should be for a period of six to nine months with fortnightly sessions.

62. The Adjudication Panel determined the appropriate sanction was termination (§99-§117). In reaching this decision, the Adjudication Panel said that it had had regard

to the ISG but exercised its own independent judgement. The Adjudication Panel's reasoning on sanction included the following:

"102. The Panel received and took account of two documents submitted on behalf of the Registrant namely a mentorship statement by Dr Wilkinson dated 31 January 2023 and a Training Certificate dated 1 February 2023.

…

105. When looking at areas of mitigation the Panel took account of the Registrant's previous good character and his engagement with the regulatory process. It noted that he had recently undertaken some form of CPD training as shown by the certificate but, the Panel received no information as to the length, depth or type or training undertaken nor of the outcomes and/or what the Registrant had learned. As such the Panel was unable to place much weight upon this. The Panel considered the report by Dr Wilkinson but observed that it was for the most part theoretical. It included headlines as to what may be covered in supervision sessions but no detail as to what the supervision would entail, goals, outcomes and/or the ability of the Registrant to learn from that supervision. The panel remained of the view that the Registrant had demonstrated only limited insight into his failings.

…

107. When considering the risk of repetition, the Panel acknowledged that the Regulatory process can be a salutary one and thus have a preventative effect. However, of more importance is the issue of insight - understanding why events took the turn they did, taking responsibility for them, learning and/or taking steps to ensure they will not recur. The Panel did not consider that the Registrant understood the power imbalance between himself and Client A nor the fact that

she was vulnerable. The Registrant still placed blame upon Client A. There was little if any information from which to conclude that the Registrant had sufficient insight into his role or his own conduct, feelings, or weaknesses to prevent recurrence. Neither the CPD certificate nor the report from Dr Wilkinson addressed this indeed the report suggested that any work would occur over many months which rather indicated an on-going risk. As such the Panel concluded that there was a risk of repetition." [Emphasis added]

63. The Adjudication Panel went through possible sanctions in ascending order and said the following about suspension and termination:

*"**Suspension Order (for a maximum of one year)***

116. The Panel acknowledged that suspension would affect the ability of the Registrant to practise and went some way to marking the gravity of the misconduct. However, the Panel was of the view that suspension did not address the Registrant's continued lack of insight or understanding of the relationship between himself and Client A. The Panel had received little evidence to address remediation or the risk of repetition. A suspension would not address these latter concerns and as such the Panel concluded it was not sufficient to meet the seriousness of the case.

Termination of Registration

117. Finally, the Panel considered the sanction of terminating the Registrant's registration and concluded that this was indeed the only appropriate sanction in this case. The Registrant had engaged in a sexual relationship with a vulnerable patient over a period of time and, whilst he had admitted some of what occurred his admissions were neither clear nor full. He continued to place some responsibility on Client A and had provided little evidence of insight or

remediation. The Registrant had acted in breach of the trust placed in him and had breached fundamental values of the profession. The Panel was of the view that it was so serious that no lesser sanction would protect the public or the public interest in declaring and upholding standards." [Emphasis added]

The Appeal

64. On 7 March 2023, the Claimant appealed the Adjudication Panel's decision on 12 grounds.

65. On 25 April 2023, Edward Lord, a lay chair of the Defendant's Appeal Panel, granted permission to appeal on certain grounds which he summarised as follows:

i) Grounds 6-9, which focussed on paragraph 80 of the determination and the conclusions that Client A suffered harm, was deprived of her therapist, that her son was deprived of her therapist and that there had been collusion.

ii) Grounds 11 and 12 which took issue with the severity of sanction. Mr Lord said that the Panel had relied '*on a finding that Client A was a vulnerable patient, and the evidence of Dr Wilkinson not being properly evaluated. Both are arguable; the basis for finding A was "vulnerable" – if meant to go beyond the inherent imbalance of power between a therapist and patient, is unclear. Whilst it is not argued in the grounds of appeal that there is specific guidance which should have been taken into account and was not, this appears at present to amount to an arguable omission. As to Dr Wilkinson, it is noted that reports are referred to in the singular in paragraphs 105 and 107, whereas the grounds of appeal sets out 4 reports*.'

66. The Appeal Panel convened on 10 and 11 July 2023 (the "Appeal Hearing"). They found that:

i) As to Ground 6, there was '*potential for harm'* but no specific evidence of actual harm.

ii) As to Ground 7, there was not a sufficient evidential basis to find Client A was deprived of a therapist.

iii) As to Ground 8, Client A's son had not been deprived of a therapist.

iv) As to Ground 9, it was not clear if the Panel had made a finding of collusion but there was insufficient evidence for such a finding. To the extent that the Panel below could be understood as making a positive finding of harm to client A's partner, this is not a finding sustained by the facts.

v) That the above errors related to only one of the nine breaches of the Code identified by the Adjudication Panel. As such, the above errors would have made no difference to the finding of misconduct.

vi) Dr Wilkinson's reports were not expert reports, and he did not have the status of an expert witness but: "*The Appeal Panel do however accept that Dr Wilkinson provided relevant evidence which was properly to be considered by the Adjudication Panel. Reading the determination holistically, the Appeal Panel is satisfied that all of Dr Wilkinson's evidence was considered – as too were the personal action plan and reflective statements produced by the Registrant before the November 2022 hearing, reading paragraphs 102 and 105 along with paragraph 72*."

vii) There were no errors of principle in the evaluative decision to terminate the Claimant's membership, and it was not outside of the bounds of what it could properly and reasonably decide.

67. Following this decision, the Claimant's membership of the UKCP was terminated.

The pleaded claim

68. The claim is for breach of contract. In the Particulars of Claim the Claimant seeks orders setting aside the decisions of the Adjudication Panel and the declarations that the Defendant did the following, in breach of an implied term of the contract:

i) acted unreasonably in concluding that the hug between the Claimant and Client A was sexually motivated.

ii) acted unfairly and in breach of the rules of natural justice in failing to properly evaluate and attach sufficient weight to the evidence of Dr Wilkinson when determining sanction.

iii) acted unreasonably in failing to properly evaluate and attach sufficient weight to the evidence of Dr Wilkinson when determining sanction.

iv) acted unfairly and in breach of the rules of natural justice and/or unreasonably in rejecting Dr Wilkinson's evidence on the grounds that it was for the most part theoretical.

v) Imposed a sanction which was unreasonable and disproportionate in all the circumstances.

vi) Made a decision to dismiss the appeal, which was unreasonable in all the circumstances set out above.

Legal framework

69. There was, by the time of the hearing before me, no apparent dispute between the parties as to the general approach I should take. In summary, although this is a private law claim for breach of contract, I should apply the principles that the Administrative Court would apply in a judicial review claim to the exercise of a

discretion by a public authority. I need to consider whether the decision to terminate the Claimant's registration was tainted by reason of irrationality (either outcome irrationality or process irrationality) or an unfair process.

70. Both parties referred to the judgment of the Supreme Court in *Braganza v BP Shipping Ltd and another* [2015] UKSC 17. That was a contractual claim brought by the widow of Mr Braganza, an engineer who disappeared, presumed dead, at sea. The claim was brought against the late Mr Braganza's employer. That employer refused a death in service benefit payment on the grounds that Mr Braganza had committed suicide. There was an obvious financial benefit to the Defendant in reaching that decision.

71. The Supreme Court held that there should be a term, implied into the contract of employment between Mr Braganza and his employer, that the discretion to refuse a benefit payment, on the grounds of suicide, was to be exercised rationally in the *Wednesbury* sense – not only did the decision have to be one that would be open to a reasonable decision-maker, they also had to exclude irrelevant considerations and have regard to obviously relevant ones. On the facts, the majority of the Supreme Court found that the employer's decision failed to meet that standard. In particular, the employer had failed to take relevant matters into account – e.g. the evidence that there were no positive indications of suicide (such as a note), that Mr Braganza's behaviour had appeared normal, that he had expressed concern about the weather (which might explain why he was on deck) and that he was a Roman Catholic and, for him, suicide was a mortal sin.

Submissions

72. I have set out, above, the declarations sought in the Particulars of Claim. By the time of the oral hearing before me, the Claimant's arguments had evolved

somewhat. Mr Butler divided his submissions into three topics: the hug, Dr Wilkinson, and sanction.

73. Mr Butler began with his challenge to the finding that the hug was sexually motivated. Mr Butler took me to caselaw on sexual motivation, in particular *Arunkulaivanan v GMC* [2014] EWHC 873 (Admin) and *Basson v GMC* [2018] EWHC 505 (Admin). He submitted that there were '*two limbs'*, i.e. two categories, of sexual motivation – first, in pursuit of sexual gratification, and secondly, in pursuit of a future sexual relationship. He argued that the case against the Claimant, in relation to the hug, was entirely on the first limb – that he received sexual gratification from it. He submitted that that was how the case was opened, that that was what was put to the Claimant and that was the closing submission of the Defendant too. He submitted that there was '*no evidence'* to support that case. He said that, to support such a case, there '*had to be touching of the thigh, buttocks etc.*' He sought to support that submission by references to the facts of other cases.

74. Mr Butler said that the second limb of sexual motivation was never put to the Claimant – i.e. he was never asked about whether the hug was to pursue a future sexual relationship. I asked if he was arguing unfairness and Mr Butler confirmed he was. He also said that, to make a finding of pursuit of a future sexual relationship, there had to be words to the effect of '*I'll meet you later'*.

75. I asked Mr Butler what would happen if a therapist had several motivations for hugging a patient – e.g. habit and the awkwardness of refusal but also a desire to keep 'the door open' to a future sexual relationship. Was it enough if sexual motivation was a factor but not the primary or 'but for' cause of the hug? Mr Butler said it needed to be the 'but for' cause.

76. Mr Butler's oral submissions under the second topic were not limited to Dr Wilkinson. He also made submissions on insight. He took me to extracts from the transcript, cited above, where counsel for the Defendant accepted that the Claimant reflected '*long and hard'* and that this was not a case of '*no insight'*. He said that the findings of the Adjudication Panel on insight did not reflect this concession and were '*fundamentally wrong'*. He said that there was '*not a shred of evidence to support the finding that Mr Hadden had blamed Client A and continued to blame Client A*.' He went through the Adjudication Panel's findings, at paragraphs 91-93 cited above, and took me to passages in the transcript, cited above, where, contrary to those findings, the Claimant had accepted that the fault was his. He said that no one had ever put to the Claimant that he blamed Client A.

77. As to Dr Wilkinson's evidence, he said that this was evidence of fact and opinion which was clearly relevant but there was only one reference to it, which suggested it was merely theoretical when it was not.

78. Mr Butler also submitted that the decision of the Claimant's employer was, although not binding, a relevant factor. It could clearly be inferred they had found that the Claimant did not pose a risk.

79. In relation to sanction overall, Mr Butler made clear that he was not suggesting that the Adjudication Panel failed to have regard to any of the factors in paragraph 5.4.5 of the ISG. However, their overall conclusion applying those factors was tainted by the earlier errors, e.g. in relation to insight.

80. Ms Mauladad KC, for the Defendant, submitted that the Claimant was, in substance, seeking to re-litigate matters already considered by the Adjudication and Appeal Panels.

81. She submitted that the conclusions of the Adjudication and Appeal Panels were not unreasonable. She drew attention to concessions made by the Claimant in writing and in cross-examination about the inappropriateness of hugging Client A. She submitted that, as the context was public protection, it would be sufficient if sexual motivation was a factor in the Claimant's decision to agree to hugging Client A – sexual motivation did not have to be the primary cause.

82. She submitted that Dr Wilkinson's letters and reports were not expert evidence, nor tendered as such. The Adjudication Panel had sufficient expertise of its own to judge the likelihood of repetition. The Adjudication Panel had considered his reports but were entitled to take a different view.

83. I asked her to address the apparent inconsistency between the passages in the transcript that Mr Butler had taken me to and the panel's finding that the Claimant lacked insight, did not recognise the power imbalance and blamed Client A. She said I would need to read the transcript 'holistically' rather than just focus on extracts. I asked her for the 'high point' – i.e. the clearest example – of the Claimant blaming Client A. She took me to a passage cited above. Very fairly, she conceded that the Adjudication Panel had been somewhat unfair, in paragraph 95 of their decision, when they relied on the Claimant's employer moving him to a non-client facing position as evidence of risk. As she accepted, that was what the employer did before they had concluded their investigation. The Adjudication Panel omitted the fact that, after the employer concluded their investigation, the employer had been willing to restore the Claimant to a client-facing role. Nonetheless, she submitted that that this was a relatively small point and did not make the overall conclusion unreasonable.

84. She submitted that sexual misconduct was always serious and it would set a very unfortunate precedent to divide different forms of sexual misconduct into a spectrum of more and less serious. The sanction was open to the panel.

85. Mr Butler made submissions in reply, including a submission that the panel had applied a blanket rule that sexual misconduct should result in strike off.

Discussion

86. In my judgment, the issues can be summarised as follows – did the Defendant breach the implied terms in:

i) Its conclusion that the hug was sexually motivated;

ii) Its treatment of the evidence on insight, remediation and risk of repetition, including the evidence of Dr Wilkinson; or

iii) Imposing the sanction of termination.

The first issue – the conclusion that the hug was sexually motivated

87. In my judgment, it was rational and open to the Adjudication Panel to reach the conclusions that the hug was sexually motivated. In the passages of their determination cited above, the Adjudication Panel gave adequate reasons for reaching that conclusion. A hug can have different motivations and different significance in different contexts – sometimes a hug may be a prelude to a sexual relationship (‘opening the door’ as the Adjudication Panel put it); and sometimes a hug may have no such connotations or motivation.

88. The context of this hug provided ample support for the conclusion that it was sexually motivated. There are often stepping stones on the way to a sexual relationship – small signals, verbal or physical, where one party seeks, and another

party gives, encouragement that the attraction between them is reciprocal. In this case, the panel was entitled to find that the hug was a stepping stone of this sort. The context was that, in the previous session, Client A had asked if the Claimant found her attractive and the Claimant had blushed, which Client A (correctly) interpreted as meaning that he did find her attractive. Furthermore, earlier in that final session, Client A asked if they could meet and the Claimant said not '*for a while*' – something he later accepted was a mistake. It was a response which opened the door to meeting again. It was in that context that the Claimant agreed to a hug with Client A. He must, at some level, have been aware that accepting the hug might further encourage Client A to contact him after therapy – something he had himself thought about, when Client A waited for him to return to practice, and something which he expressly discussed with Client A earlier in the same session. If he had refused the hug, it would have sent the opposite signal.

89. I accept the submission of Ms Mauladad KC that the desire to have a sexual relationship only needed to be a factor in the hug, not its 'but for' cause, for the allegation of sexual motivation to be made out. The context is public protection. It is often difficult to establish a 'but for' cause. There is no typical patient who can act as 'control' in a 'but for' analysis. Where it is established, on the balance of probabilities, that a desire to have a sexual relationship was a factor in a therapist's conduct towards their patient, that should be enough to establish that the conduct was sexually motivated.

90. I reject the submission of Mr Butler that it was unfair for the panel to make any findings on what he termed 'the second limb' of sexual motivation (i.e. pursuit of a future sexual relationship) because that case was not put to the Claimant. This was a submission he developed orally for the first time. I do not see it in his pleadings or skeleton argument. It was not a submission I can accept.

91. First, it seems to turn on a rigid classification of what amounts to sexual motivation. Mr Butler took me to the judgment of Mostyn J in *Basson*, in particular to paragraph 14 where Mostyn J appears to divide sexual motivation into two categories (gratification and pursuit of a future relationship):

> '*A sexual motive means that the conduct was done either in pursuit of sexual gratification or in pursuit of a future sexual relationship.'*

92. However, in *GMC v Haris* [2020] EWHC 2518 (Admin), Foster J said the following (which was not overturned by the Court of Appeal) in relation to allegations of sexual motivation:

> *"Of course, there are significant differences in the context and the analogy is not exact, but it does seem to me that pleading "sexual motivation" is unhelpful. Similarly, to look for "sexual gratification" may be misleading and overcomplicating. It is irrelevant to the actions which the GMC would wish to proscribe whether or not the perpetrator was sexually "gratified" at all - whether before, after or during the act in question. Gratification, as with "pursuit of a relationship" are, pace the analysis of Mostyn J in Basson , not helpful in my judgement in promoting the public interests at stake here. These criteria set the bar too high and I respectfully disagree that they represent the law."*

93. In my judgment, it is not helpful, at least in this case, to parse the allegation 'sexually motivated' and divide it into two hermetically sealed alternatives – either pursuit of sexual gratification in the moment or pursuit of a future sexual relationship. 'Sexually motivated' is a term that most people can understand and apply without the need for further definition. As Foster J pointed out in *Haris*, introducing the term 'gratification' can complicate matters by adding in something which may be

irrelevant - i.e. whether there was sexual 'gratification' to be derived from the act. Furthermore, there is no clear dividing line between the two categories of sexual motivation identified in *Basson* at [14] – 'pursuit of a future sexual relationship' is, very often, indistinguishable from 'pursuit of sexual gratification'. The reason why a future sexual relationship is pursued is, very often, because it is hoped that the sexual element of that relationship will provide sexual gratification.

94. Turning to this case, I do not think that the allegation - that the hug of Client A was sexually motivated - should turn on whether the Claimant derived some sexual gratification from the hug itself or hoped that it would 'open the door' to sex with Client A at some point in the future. In my judgment, the Adjudication Panel was entitled not to make any findings as which of the two 'limbs' of sexual motivation this fell into but instead to concentrate on the overarching allegation – i.e. sexual motivation.

95. In my judgment, counsel for the Defendant, in his submissions and cross-examination, was not intending to draw the distinction which Mr Butler draws between what he termed the first and second 'limb' of sexual motivation. The questions counsel for the Defendant asked, and the case he put, gave the Claimant a fair opportunity to put forward his case about the motivation for the hug. The Claimant's answer was that the hug was not 'the problem'. The problem, in his view, was what happened shortly before the hug: i.e. the suggestion, which he left hanging in the air, that they might meet up in 'a while', after therapy concluded. His evidence was that, if it had not been for that suggestion, then '*a hug at the end of therapy would have just been a hug at the end of therapy*'. As I read that evidence, the Claimant was effectively saying that the hug would not have been a stepping stone to a sexual relationship, if there had not been another, earlier stepping stone – i.e. namely his suggestion that they could meet in a 'while'.

The second issue – the treatment of the evidence as to insight, remediation and risk of repetition, including the evidence of Dr Wilkinson

96. Much of the submissions in the Particulars of Claim and skeleton argument focussed on Dr Wilkinson. The Adjudication Panel's reasoning makes little reference to Dr Wilkinson. They refer only to Dr Wilkinson's 'report' singular.

97. I do not think that I can infer, from that, that the Adjudication Panel entirely overlooked Dr Wilkinson's first three reports. What happened, in substance, is that the Claimant presented three reports/letters from Dr Wilkinson for the first hearing and a fourth report for the final hearing. In their findings on misconduct and impairment after the first hearing, the Adjudication Panel did not refer expressly to Dr Wilkinson but there is no reason to doubt that they had read his letters. In particular, the Adjudication Panel's reference, in paragraph 92, to '*the personal development it was said the Registrant had undertaken*' was likely intended to include the personal development that Dr Wilkinson said the Claimant had undertaken.

98. What then happened is Dr Wilkinson produced a fourth report by the time of the sanctions hearing. The Adjudication Panel used the singular term 'report' as they were focussing, in their sanction decision, on the new material received since the last hearing. They had already read Dr Wilkinson's earlier evidence, in the decision on impairment, and nonetheless came to a decision that the Claimant lacked insight and there was a risk of repetition.

99. However, the more difficult issue, in my judgment, is whether the Adjudication Panel took into account the relevant evidence in relation to insight, remediation and risk of repetition and reached conclusions on insight, remediation and risk of repetition that were rationally open to them.

100. I am very conscious that the decision was for the Adjudication Panel and not for me. The test is not whether I would have made the findings on insight, remediation and risk of repetition that the Adjudication Panel did. The test is whether the Defendant was in breach of the implied terms.

101. The Supreme Court in *Braganza* drew an analogy with *Wednesbury* rationality when explaining the implied terms they read into that contract. The *Wednesbury* rationality test is flexible and adapts to the context of the decision and decision-maker under challenge. The context of the Adjudication Panel's decision was judicial, or quasi-judicial. The Claimant's career and livelihood were at stake. The power to determine that career and livelihood was in the hands of the Adjudication Panel. The Claimant had a right to expect that this quasi-judicial body, which held so much power over his career and livelihood, would make their decision judicially. In other words, I think the application of the *Wednesbury* standards, in this context, can be informed by the learning of the common law on what judges and tribunals should and should not do.

102. In my judgment, in this context, the *Wednesbury* requirement, to have regard to material considerations, required the Adjudication Panel to consider the evidence in relation to insight, remediation and risk of repetition judicially. Considering evidence judicially requires a decision-making panel not to place excessive reliance on how a registrant comes across to them but to balance any subjective impressions they may have of that person against the relevant documentary evidence. The courts have said that tribunals should not make decisions on a witness's honesty or credibility based exclusively on their demeanour without due regard to relevant documentary evidence (see e.g. *Dr Moodliar v GMC* [2025] EWHC 913 (Admin) and *Sheikh v Law Society* [2006] EWCA Civ 1577 at [97]). One reason for that is a proper recognition of the fallibility of subjective perceptions of how someone has

come across in the witness box. In my judgment, a similar approach should be taken to insight, remediation and risk of repetition. A judicial decision-maker should guard against over-reliance on how the witness comes across to them.

103. Considering evidence judicially also requires a decision-making panel to act fairly. That may require a decision-making panel to ensure that a registrant has had an opportunity to comment on evidence that the tribunal is minded to hold against them, particularly if that evidence is ambiguous or capable of different interpretations. The duty to act judicially also requires a panel only to make findings of fact when those findings are supported by evidence, rather than (for example) speculative supposition.

104. In my judgment, the Adjudication Panel's treatment of the evidence of insight, remediation and risk of repetition was in breach of the implied terms. In *Wednesbury* terms, the Adjudication Panel failed to have regard to material evidence, failed to act fairly, and made irrational findings which were unsupported by the evidence. Another way of putting it, indeed the way I would prefer to put it, is that the Adjudication Panel did not act judicially in their treatment of the evidence on insight, remediation and risk of repetition.

105. My overall assessment is that the Adjudication Panel took against the Claimant, after hearing his oral evidence, and failed to balance their adverse impression of him against the available evidence, including both the documentary evidence and the actual words the Claimant used in giving oral evidence. I was urged by both parties to read the judgment and the transcript 'holistically'. I have done so and that is my holistic assessment. I have reached that assessment for the following reasons.

106. First, the Adjudication Panel made a critical finding, which they relied on, that it was not clear that the Claimant accepted responsibility and that, instead, he 'blamed' Client A for what had happened. I have read the transcript more than once, and the underlying evidence, and I do not understand how a fair-minded judicial body could reach such a conclusion. The Claimant repeatedly said that the responsibility was his and repeatedly apologised. I have set out above some of the many instances when the Claimant expressly recognised that the fault was his, that, by virtue of his role as psychotherapist, he was in a position of power over Client A, and that he had been wrong to overlook that inherent power differential.

107. What the Claimant did do, on occasions, was seek to mitigate his admitted failures and lack of judgment. He did that in several ways, referring to factors that may have impacted on his judgment at the time (isolation, depression, the ending of a relationship) and also by stating that Client A was less vulnerable than some clients and had been the one to initiate the hug and initiate the subsequent contact. It is very common that someone, admitting wrongdoing, will seek to mitigate their wrongdoing. A judicial body, considering such mitigation, should be careful to distinguish between mitigation and denial. However, the Adjudication Panel was not so careful. On the contrary, they treated statements of mitigation as statements of denial or blame. What is more, they gave the Claimant no fair opportunity to address their concern, that he did not accept responsibility and, instead, blamed Client A.

108. To take one example, the Adjudication Panel placed great emphasis on a particular phrase that the Claimant used – that he '*chose to be seduced over the boundary into more intimate relationship'.* They suggested that this 'phraseology' '*places the blame'* on Client A. I do not see that. Taken in isolation, 'seduced' might imply that Client A was responsible. However, the Claimant did not say 'I was seduced' but I

'chose to be seduced'. The phrase 'chose to be' is an acknowledgement that the Claimant had power and agency and made the wrong choice. It is, in my view, illustrative of their general approach that the Adjudication Panel did not cite the earlier part of the same sentence, which made it even clearer that the Claimant could and should have maintained a 'firm boundary'. What is most telling of all is that the Adjudication Panel gave the Claimant no opportunity at all to address their concern about his 'phraseology'. The phrase on which they placed such reliance was taken not from oral evidence but from a reflection statement produced before the hearing. The Claimant was not cross-examined about this phrase and the Adjudication Panel did not ask him about it. He had no opportunity to explain what he meant by this 'phraseology'. If it had been raised with him, he might have drawn attention to the phrase 'chose to' and what that meant. He might have explained that the word 'seduced' was not intended to take away from his admission, repeated on several occasions, that the responsibility for the transgression was his and his alone. He was not given that opportunity and the Adjudication Panel held against him an (at worst) ambiguous phrase which he was not asked to clarify.

109. I should add that, although the Adjudication Panel did not ask the Claimant about this phraseology in terms, Ms Iona and the Chair did ask him whether he accepted that there was '*vulnerability'* in Client A, whether there was a power imbalance between client and therapist, and whether he was saying the power between him and Client A was '*equal'*. The Claimant expressly accepted that there was vulnerability in Client A (albeit not as much vulnerability as some other patients), that there was always an inherent power differential between a patient and a therapist, and that he was not saying the power was equal. That was all of a piece with his repeated accepted that, although he had lost sight of it '*at the time'*, there was always a power differential between a therapist and client. I do not understand

how, in light of the evidence before them (including the questions and answers summarised above), the Adjudication Panel felt able to say that there was a risk of repetition because the Claimant still had not shown that he understood the power imbalance or the fact Client A was vulnerable. I can only infer that the Adjudication Panel had lost sight of the actual words the Claimant used but were relying instead on their subjective impressions of how he delivered those words.

110. Secondly, the approach of the Adjudication Panel to the material which weighed against their conclusions, on insight, remediation and risk of repetition, was peremptory and, at times, irrational and/or unfair. That material came from the following sources: the Claimant himself, Dr Wilkinson, the Claimant's character witnesses, the Claimant's employer and the IOP. Each of these sources of material was either ignored or peremptorily dismissed, in some cases for inadequate and unfair reasons.

111. I begin with Dr Wilkinson as he was the principal focus of this ground. I agree with the finding of the Appeal Panel that Dr Wilkinson's evidence was 'relevant' and 'to be considered'. Dr Wilkinson had spent a very large amount of time listening to the Claimant, far more time than the Adjudication Panel. The Adjudication Panel were not bound to follow Dr Wilkinson's opinion, that the Claimant was not a recidivist and posed no risk, but they should have given it due weight. It is fair to say that Dr Wilkinson was not independent – he was, after all, being paid by the Claimant to act as a mentor. On the other hand, Dr Wilkinson was a distinguished and regulated psychotherapist who could be assumed to be giving his honest opinion.

112. In my judgment, the Adjudication Panel did not give Dr Wilkinson's opinion on risk of repetition due weight, or indeed any weight. In their reasoning on impairment and risk of repetition, they make no direct reference to Dr Wilkinson at all. Their reasoning only addresses Dr Wilkinson directly when they considered sanction. At

that stage, they say that the length of the supervision plan set out in Dr Wilkinson's fourth report: *'rather indicated an on-going risk'*. This was unfair and unreasonable. Reading Dr Wilkinson's reports together, he was very clear that the Claimant posed no real risk of repeating his misconduct. Dr Wilkinson only produced a fourth report because the Adjudication Panel reached a different conclusion to him on risk of repetition. It was understandable, in such circumstances, that the Claimant and his legal advisers might obtain a further report from Dr Wilkinson, to respond to the Adjudication Panel's findings. It could not fairly be held against the Claimant that he planned to continue, for several months, his supervision with Dr Wilkinson. To treat that plan for further supervision as indicative of 'on-going risk' is unfair and/or unreasonable. It ignores what that Dr Wilkinson actually said about risk.

113. The approach to the evidence of the Claimant was also unfair. There was no dispute between the parties that, in the middle of treating Client A, the Claimant had to take a prolonged break due to illness. The Claimant's evidence, that this physical illness left him depressed and isolated and led to the break-up of his relationship, was not challenged by the Defendant in cross-examination. Indeed, there was no challenge to any of the Claimant's evidence of primary fact. It was not suggested that he was an untruthful witness. It was unfair, in those circumstances, for the Adjudication Panel to place no weight on the Claimant's evidence, about his own vulnerability at the time, on the basis that '*no medical or other professional evidence was provided'.*

114. The approach to the findings of the employer was also unfair and/or unreasonable. The Adjudication Panel dismissed the significance of the Claimant being reinstated by his employer on the basis that they '*had moved the Registrant to a non-client facing position to manage the situation pending determination in the regulatory process. That was indicative of managing potential risk pending a decision and is quite different to asserting they had found no risk at all.*' That is an unfair and/or

unreasonable synopsis of what happened. The Claimant's employer did initially move him to a non-client-facing position but that was pending the determination of their own investigation, not pending '*determination in the regulatory process*'. More importantly, once the employer concluded their investigation, they were willing to reappoint the Claimant to a client-facing role. That suggests that they did not think that he posed a material risk to clients. It is true that this did not happen – that the Claimant did not resume a client-facing role but that was due to the interim suspension from the BABCP. It appears from the letter of 14 October 2021 that the Claimant's employer did not expect the interim suspensions to be in place for long – they appear to have expected and intended that the Claimant would soon resume a client-facing role. The fairest inference from the employer's actions was that they reached the view that the Claimant posed no material risk to patients. The Adjudication Panel's attempt to draw the opposite inference, that the actions of the employer were '*indicative of managing potential risk',* was unfair and/or unreasonable in these circumstances.

115. The approach to the findings of the IOP was also unfair and/or unreasonable. The relevance of the IOP's findings was dismissed, by the Adjudication Panel, on the basis that the IOP had not heard live evidence from the Claimant. I accept that the Adjudication Panel was not bound by any of the IOP's findings. I accept also that the IOP was concerned with risk of repetition over a different time period: their focus was risk of repetition pending the substantive hearing. I further accept that the Adjudication Panel heard the Claimant give live evidence and they were entitled to place reliance on that live evidence. That live evidence could provide a reason for reaching different conclusions to the IOP. However, the caselaw cited above cautions against giving too much weight to the subjective impressions formed of a witness giving live evidence. The Adjudication Panel should have checked their

impressions of the Claimant in the witness box against the words he used and the other available documentary evidence. The findings of the IOP could and should have been a sense check against the Adjudication Panel's findings – they were, after all, considering much the same documentary evidence. The Adjudication Panel did not take care to compare their findings on the documentary evidence with the findings of the IOP on the precisely the same evidence. If they did, they would have noticed that they reached diametrically opposite conclusions based on the same material – the IOP considered that the reflection statement, the certificates for courses attended and the evidence from Dr Wilkinson 'demonstrated' that the Claimant had developed insight. The Adjudication Panel looked at the same material and dismissed it, saying there was '*little reference'* and '*little or nothing*' to show what he had learned from the training he had undertaken in a way that might prevent recurrence. The Adjudication Panel was entitled to reach a different conclusion to the IOP on the significance of such material but they ought to have explained why they had done so. They provided no explanation for taking a different view to the IOP other than the IOP had not had 'the benefit' of hearing the Claimant's live evidence. In my judgment that was not an adequate explanation for taking the view that the documentary evidence, which the IOP had placed weight on in finding insight, in fact showed 'little or nothing' in the way of insight and remediation. On the contrary, it supports my conclusion that the Adjudication Panel took against the Claimant, because of how he came across to them when giving live evidence, and dismissed or discounted all the evidence which weighed against their subjective impressions.

116. Finally, in my judgment, it is telling that the Adjudication Panel reached various findings, adverse to the Claimant, which were struck down by the Appeal Panel on the basis that they were unsupported by the evidence – e.g. findings that the

Claimant had harmed Client A and deprived her and her son of a therapist. The Appeal Panel concluded that these errors did not impair the Adjudication Panel's ultimate conclusion. It is true that the errors were in relation to matters which are not expressly referred to in the paragraphs of the determination which set out the conclusion on sanction. However, in my judgment, these errors were illustrative of an Adjudication Panel that had taken against the Claimant and was not acting judicially.

The third issue - sanction

117. In my judgment, the errors above tainted the Adjudication Panel's conclusion on sanction. The reasoning on sanction is very brief – mostly a series of conclusions. Although the Adjudication Panel refers, in the last words of paragraph 117, to the public interest in declaring and upholding standards, it is impossible to draw any conclusions on what sanction they would have imposed if they had not made the findings they did on insight, remediation and risk of repetition.

118. If the Defendant had not erred, in their treatment of insight, remediation and risk of repetition, I would not have granted any relief in relation to sanction. Any psychotherapist who begins a sexual relationship with his patient only 10 days after their therapy has concluded should realise that their conduct might lead to termination. The ISG is clear that sexual misconduct is likely to lead to termination. It is clear from paragraph 5.4.4 of the ISG that sexual misconduct includes having a sexual relationship with an ex-client, if not enough time has passed since therapy to ensure 'proper closure'. In this case, not enough time had passed. 10 days was plainly not enough to ensure 'proper closure'.

119. Furthermore, in my judgment, para. 5.4.4 of the ISG does not condone a therapist taking steps, while treating a patient, to 'open the door' to a future sexual relationship

– whether that future relationship is to begin 10 days, 'a while' or six months after the treatment concluded. Adjudication Panels are entitled to impose serious sanctions on therapists who take such steps.

120. I reject the submission of Mr Butler, made for the first time in reply, that the Adjudication Panel had applied a 'blanket rule' that sexual misconduct should result in termination. In my judgment, the reasoning in relation to sanction is not suggestive of such an approach. On the contrary, it is clear from paragraph 117 that the Adjudication Panel had regard to the factors set out in paragraph 5.4.5 of the ISG. If the Adjudication Panel had reached fair and reasonable conclusions on risk of repetition, then termination would certainly have been open to them.

Relief

121. I invite the parties to agree an order in light of this judgment and to agree the terms of relief. If they cannot agree, I will resolve the disagreement, either on the basis of succinct written submissions or, if the parties prefer, a short hearing on relief. I could accommodate such a hearing at 2pm on 27 June 2025, if that suited the parties.

122. In the embargoed draft judgment, I expressed a hope that the Defendant would consider whether they could agree a form of relief that would not require the Claimant to go through a new Adjudication Panel hearing. No such agreement was reached. Instead, the parties have agreed an order that provides for a further hearing before an Adjudication Panel. In light of that fact, I have removed, from the final draft of this judgment, observations I made in the embargoed draft about the impact of the sanctions to date on the Claimant. As there is to be a further hearing, I do not think it would be helpful or appropriate for me to say anything relevant to sanction. The decision on sanction will be for that new Adjudication Panel, not me.

123. In conclusion, for the reasons set out above, the claim succeeds in part.