



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

4, 5, 6 July, 2 August 2023

17 January, 22 March 2024

In-Person and Online

Name of Registrant: Mark Rayner

Heard by: Adjudication Panel

Panel Members: Catherine Hinton (Lay Chair)
Sandra Spenceley (HIPC)
Stephen Coulter (CFCST)

Legal Assessor: Jon Whitfield KC, Doughty Street Chambers

Panel Secretary: Kat Zhou

UKCP Presenting Officer: Max Shephard, 4-5 Gray's Inn Square
Tom Stevens, Doughty Street Chambers
Nabil Mekkaoui, UKCP

Registrant: Philip Coppel KC, Cornerstone Barristers

Allegations found proved: 1a-b, 2a-c,e,g,i-j

Allegations found not proved: 2d,f,h,k-l,m,n

Misconduct and impairment: Found proved

Sanction: Removal from the Register

Interim suspension order: ISO granted to cover the appeal period

Detail of Allegations

That being a UKCP registered psychotherapist since at least 2003, you Mark Rayner (the Registrant):

1. (a) On 12 August 2021 whilst working as a Senior Psychotherapist at Barnet, Enfield and Haringey Mental Health Trust were dismissed for gross misconduct.

Denied.

Found Proved.

(b) The decision and findings which led to your dismissal as set out at Schedule 1 is incongruent with what is expected of a UKCP registrant and related to your practice as a psychotherapist.

Denied.

Found Proved.

2. The behaviour set out at 1 above is in breach of UKCP's Ethical Principles and Code of Professional Conduct (2009) (2009 Code) and UKCP Code of Ethics and Professional Practice (2019) (Code 2019), in particular:

Denied.

Found as follows.

- a. You failed to take responsibility for respecting the service user best interests when providing therapy thereby breaching clause 1.1 of the 2009 Code;

Denied.

Found Proved.

- b. You failed to treat the service user with respect thereby breaching clause 1.2 of the 2009 Code;

Denied.

Found Proved.

- c. You exploited your relationship with the service user thereby breaching clause 1.3 of the 2009 Code;

Denied.

Found Proved.

- d. You failed to carefully consider the possible implications of entering into a dual or multiple relationship with the service user thereby breaching clause 1.5 of the 2009 Code;

Denied.

Found not proved.

- e. You failed to take into account the length of therapy and time elapsed since before entering into a personal or business relationship with the service user, thereby breaching clause 1.6 of the 2009 Code;

Denied

Found Proved.

- f. You failed to respect the service user's autonomy, thereby breaching clause 1.7 of the 2009 Code;
Denied.
Found no case to answer.
- g. You failed to respect, protect and preserve the confidentiality of the other people you were seeing for therapy when sharing private details with the service user thereby breaching clause 3.1 of the 2009 Code;
Denied.
Found Proved.
- h. You failed to protect sensitive and personally identifiable information obtained from the course of your work as a psychotherapist thereby breaching clause 3.2 of the 2009 Code;
Denied.
Found no case to answer.
- i. You failed to acknowledge that your professional and personal conduct may have both positive and negative effects on the service user thereby breaching clause 4.1 of the 2009 Code;
Denied.
Found Proved.
- j. You failed to undertake, in a continuing process to critically examine the effect of the conduct at (i) above may have had on the service user and place a priority on preserving the service user's psychotherapeutic best interests, thereby breaching clause 4.1 of the 2009 Code;
Denied.
Found Proved.
- k. You failed to consider how best to refer the service user to another psychotherapist or professional when it became clear this would be in her best interests, thereby breaching clause 5.7 of the 2009 Code;
Denied.
Found not proved.
- l. You failed to report any potential breaches of this Ethical Principles and Code of Professional Conduct by yourself to UKCP, thereby breaching clause 10 of the 2009 Code;
Denied.
Found not proved
- m. You failed to accept responsibility to act against colluding with practice harmful to clients, thereby breaching clause 13.2 of the 2009 Code;
Denied.
Found not proved.

- n. You failed to Act in a way which upholds the profession's reputation and promotes public confidence in the profession and its members, including outside of your professional life as a UKCP practitioner, thereby breach clause 32 of the 2019 Code.

Denied.

Found not proved.

~~3. During the UKCP Hearing between 9 and 10 May 2019, you gave evidence to the Adjudication Panel to the effect that:~~

~~(i) the amount of contact with Client A outside of the therapeutic framework was extraordinary in your experience~~

~~(ii) the nature and level of contact with Client A had not happened before,~~

~~(iii) in your career this was a unique experience~~

~~(iv) you did not disclose to the Panel that you had contact with a further service user outside of the therapeutic framework by 2019~~

~~Your conduct was:~~

~~(i) Dishonest and/or~~

~~(ii) Misleading~~

For the reasons set out above your fitness to practice is impaired by reason of misconduct and/or decision of another body.

Documents

1. The Panel had placed before it the following documents:

- A principal bundle on behalf of UKCP amounting to 375 pages, hereafter referred to as C1;
- A second bundle on behalf of UKCP amounting to 1 page, hereafter referred to as C2;
- A third bundle received on behalf of UKCP amounting to 3 pages, hereafter referred to as C3;
- A principal bundle on behalf of the Registrant amounting to 58 pages, hereafter referred to as R1;
- A second bundle on behalf of the Registrant amounting to 27 pages, hereafter referred to as R2;
- A third bundle received on behalf of the Registrant amounting to 113 pages, hereafter referred to as R3;
- An opening skeleton on behalf of UKCP, amounting to 9 pages;
- An opening skeleton on behalf of the Registrant, amounting to 12 pages;
- An Evidence Matrix on behalf of UKCP amounting to 15 pages;
- A written closing submission on behalf of UKCP, amounting to 21 pages.

Preliminary Matters

Documents

The Panel received and considered:

- Skeleton Argument from Mr Coppel KC on behalf of the Registrant amounting to 12 pages;
- Skeleton Argument from Mr Shephard on behalf of the UKCP amounting to 9 pages.

1. Mr Coppel KC raised two preliminary arguments. The first concerned the validity of Particular Three in the Allegation. The second was that save for some minor matters, the whole basis of the UKCP case was flawed since the concerns raised were predicated on a person known as **A** being the Registrant's client whereas he said **A** was a former client.

Particular Three

2. Particular Three was alleged by the UKCP shortly in advance of the hearing in December 2022. The UKCP sought to add Particular Three to the Allegation before that Panel, the Case Officer

having reviewed information in the UKCP's possession and being of the view that the information supported this additional particular.

3. Mr Coppel took the Panel to various paragraphs within the UKCP Complaints and Conduct Process (CCP) and submitted that this required a complaint or information to be "received" by the UKCP for it to begin proceedings at all. Once a complaint or information had been received it then had to be assessed by a Case Manager for potential breaches of the UKCP Code of Conduct (the Code). If there were potential breaches, the case then needed to be screened through a mandatory process of investigation which included giving the Registrant an opportunity to comment upon the complaint or information. Mr Coppel said the screening process was not an optional 'bolt-on' but was mandatory and was there to stop unviable cases. Even when a case was viable the Case Manager still has a discretion on whether to proceed.
4. Mr Coppel submitted first that since there had been no complaint or information "received", and the UKCP had simply reassessed material it already had, the entire process could not start at all. Second, since there had been no screening the case had not been properly placed before this Panel.
5. Mr Shephard conceded that there was no third-party complaint or complainant but said pursuant to Rule 5.2 there was information about the Registrant. He then considered the meaning of 'screening' under Rule 6 and the term 'realistic prospect' (the test used in screening) and asked the question whether the screening process was mandatory. Whilst he conceded that on the face of the Rules it was potentially mandatory, he drew the Panel's attention to the directions made at the December 2022 hearing to adjourn to allow the Registrant time to obtain legal advice. He had done so and there was no prejudice against him since the screening process had been or would be mirrored in this process and the hearing process. There had been extensive consideration of the new particular when adding it into the case.

Decision of the Panel on Particular Three

6. The Panel accepted the advice of the Legal Assessor which included that the UKCP and this Panel derive their authority from the Rules. There is no 'inherent jurisdiction' within this regulatory process.
7. The Panel first considered the meaning of a complaint or information being 'received' by the UKCP. It regarded the suggestion that the term 'received' required any complaint or information to be passed or handed to the UKCP by a third party before it was empowered to act as obtuse. Such a narrow interpretation of the word received was inconsistent with

the overarching objective of public protection. It would preclude the UKCP from considering any concern of which it became aware unless someone wrote, emailed, or phoned in.

8. The Panel concluded that once the UKCP was aware of or in possession of material which raised a concern, that material had been 'received' for the purpose of initiating proceedings. It did not matter how the UKCP became aware, what was important was that it was in fact aware. It could then investigate and act in the public interest. There are safeguards placed on this in terms of acting upon anonymous complaints but in this case the complaint was not anonymous. A concern was raised by the Case Officer who had reviewed information held by the UKCP.
9. The Panel next considered the status of the CCP. It considered this to be an important document both in terms of the stages and processes that it described but also the underlying reason of public protection. The Panel considered there were other important strands underlying the CCP namely protection of the Registrant from unfairness and protection of the UKCP from unwarranted criticism. The process is set out to provide formality and a scheme that is adhered to so that the participants, UKCP, Registrant, witnesses, lawyers etc know what to expect and when to expect it.
10. Having received the information (i.e. being aware of it) the Panel considered whether the UKCP process as set out in the CCP was mandatory. It concluded that whilst there are some limited areas of discretion it was for the most part, a mandatory procedure. In coming to that conclusion the Panel took note of the general introductory note as stating that *"This document sets out the UKCP's process for dealing with complaints"* as well as certain specific paragraphs within the CCP.
11. The Panel first considered Para 2.4 which provides that if a complaint appears to be within the scope of regulatory proceedings *"... the complaint **will** progress in accordance with this procedure"*. The Panel considered the term "will" to mean the procedure is mandatory and the CCP must be followed.
12. The Panel next considered Para 6.2 of the Process which provides that:
*"If the Case Manager, having applied the procedures set out in sections 2 - 5 above determines that UKCP has received a complaint against a Registrant or the case is proceeding under 5.2, it **shall** be screened under these provisions."*
13. The Panel concluded that the term "shall" was a directive, meaning that something would be done or would occur. The Panel determined that screening was a mandatory process designed to assess the seriousness of a complaint and whether there was evidence to support a realistic prospect of proof. This included whether a registrant had a satisfactory answer to a complaint or concern. Such initial screening protected the public interest and the UKCP by

using a specific test (the 'realistic prospect test') to assess the weight and reliability of evidence and, it provided a safeguard to a registrant since if this test was not met a case is closed.

14. Rule 6.9 provides that if the realistic prospect test is met the case will usually be referred to an Adjudication Panel. The term 'usually' infers that there is a discretion given to the Case Manager which may be exercised in some cases. The Panel noted that the CCP does not provide for referral of a case or a charge to an Adjudication Panel other than after screening and that is only done if the realistic prospect test is met.
15. The Panel concluded that since the CCP had not been followed and the screening requirement not met, the UKCP did not have the power to prefer Particular Three. It was thus a nullity and not before this Panel. The Panel did not have jurisdiction to hear it.
16. The Panel regarded it as unfortunate in terms of resources and public protection that a seven month gap had elapsed between the purported preferment of Particular Three and the point at which this objection was raised. Whilst there was some force to the UKCP argument that this delay precluded the suggestion that the Registrant was prejudiced (because he had plenty of time to prepare his case) this did not get around the fact that an initial mandatory, protective process had not been followed. The jurisdiction of the UKCP to prefer an allegation or a particular and for this Panel to hear the same is provided by the CCP and it must be followed. The delay and the fact that there had been several previous hearings were not a substitute for the CCP. Particular Three not being properly before this Panel, it was a matter for the UKCP as to whether it should bring that as a separate case in due course.

Client/Former Client

17. Mr Coppel said there was a 'mismatch' between what the Registrant's employer (an NHS Trust) was concerned with and what the UKCP is legitimately concerned with. He took the Panel to the 2009 Code and asked, 'what was the reach of the allegations?' He submitted that the purpose of the Code was to define generic principles. It did so in thirteen 'chapters' of which the first (Best Interest of the Client) and third (Confidentiality) were relevant. He said it related to the relationship between a registrant and a service user and, the term 'client' was used throughout save at Code 1.6 and Code 3.4. The first referred to the care and assessment required regarding relations with a 'former client'. The second dealt with publicity and also referred to 'former client'. He said that save for these exceptions the Code was all about existing clients. He submitted that this was not the case regarding the NHS Trust who were concerned about their service user. He said a client may see one therapist and then see another therapist, but they remain a service user/client of the NHS Trust.

18. Mr Coppel submitted that A was a client of the Registrant from 2014 until September 2017 after which A “ceased to see him in any professional form”. He then went to the two particulars the first being that on 12 August 2021 the Registrant was dismissed for gross misconduct the decision and findings of which were said to be incongruent with registration and particular two which referred to ‘service user’ save for sub-paragraphs ‘l’ and ‘n’ which referred to a failure to report and upholding the reputation of the profession. Mr Coppel said the NHS findings were ‘what exclusively founds or defines the case’. He then took the Panel to various pages within the hearing bundle (pp117, 167, 204, 205, 215) and said that the Registrant communicated with A during formal sessions and after but at the time of the complaint(s) A was a former client. He said all the evidence regarding the NHS case was from November 2017 onwards. A was a service user of the NHS Trust but she was not a client of the Registrant. He said there was nothing in the NHS findings that supported a contravention of the Code.
19. Mr Coppel took the Panel to further pages in the bundle (pp43/114, 118 – 122 and 215) and said all of this was in relation to a former client, not a current client. Mr Coppel then took the Panel to each of the NHS complaints in the bundle; Complaint No.4 at p122 meeting socially, No.5 at p125 a letter, No.6 at p127 (Nos 7 & 8 are not pursued), No.9 at p129 personal information, No.11 at p130 a job offer, No.12 at p132 not to tell anyone, No.13 at p133 failing to inform UKCP of an investigation, No.14 at p134 personal contact, No.15 at p136 asking for business support. Mr Coppel said that all of these related to the Registrant’s former client save for two and only these two were ‘competent’ to go forward but they did not support a case of gross misconduct. He said the UKCP had failed to understand that what was significant for the NHS was not of significance regarding the Code. Where the Code related to a former client it said so otherwise it only related to existing clients.
20. Mr Coppel rejected the UKCP proposition that ‘client’ includes ‘former client’ since there was a deliberate distinction drawn in areas of the Code such as 3.4 which could not be ignored. He submitted that the Registrant was entitled to look at the Code to determine what can or cannot be done with a former client. It was fundamental as to what may properly go before a panel and was not the same as what may go before an employer. Mr Coppel said it was not proper to stretch the language of the Code to cover this situation.
21. Mr Shephard submitted that the starting point was the structure of the charges which were in two parts. Part one related to the NHS decision and findings and the question whether these were incongruent with registration. He agreed that the 2009 Code applied and that the term ‘former client’ was used in some places. He said as with charge two, the Panel was not bound by the breaches suggested by the UKCP. Mr Shephard first dealt with NHS Allegation 15 and said the Registrant had accepted A was an NHS service user but was also his client. It was not right to say the case was exclusively concerned with a former client. Mr Shephard

regarded the wording of Particular One as clear 'were the NHS finding and reasons incongruent with registration' and Particular Two listed alleged breaches of the Code. He said the real issue was did the allegations breach the Code and he said the thrust of the UKCP case was that A was always a client of the Registrant. He said there was no definition of client or former client and one looked at the facts of the case and the relationship which provided the context for ongoing ethical responsibility. He said for example that Para.3.2 of the Code provided a requirement of privacy in perpetuity.

22. Mr Shephard then took the Panel to various comments by the Registrant including Para 10(a)(i),(ii) and (iii) in the UKCP's Skeleton Argument where Mr Shephard submitted the Registrant was applying the Code after his NHS contract had been terminated and thus on his own analysis was treating A as a client. At various points in the bundle the Registrant was making professional judgements – at p165 he was assessing information received during psychotherapy, at p161, para 10(a)(iv) at p164 the Registrant explained his motivation for offering a job opportunity to A as part of his role and in keeping with his service. Mr Shephard said that whatever his motive, this demonstrated that A was still a client of the Registrant and he viewed her as such.
23. Mr Shephard submitted that the point raised by Mr Coppel seemed to be that because Para 10(b) says 'former client' everything else in the Code only refers to clients. Mr Shephard took the Panel to paragraph five of the introduction to the Code (bundle p29) which sets out that it cannot cover every eventuality and thus registrants must carefully consider the spirit of the Code. Mr Shephard said there were several places in which terms such as 'former client', 'clients current or past', and 'any client' were used (Codes 1.3, 1.6, 1.8, 2.3, 3.2, 3.3, 5.7). He submitted that A was a client of the Registrant but that there were rules that refer to all/past/former clients that captured all of the Registrant's conduct. Regarding what he described as Mr Coppel's headline point, Mr Shephard said there was a significant distinction between contractual termination and the ongoing obligation of a client/registrant relationship. He said that regardless of the NHS contractual position A was always a client of the Registrant.
24. Mr Coppel responded by submitting that the suggestion that client included former client does not work. If this were the case Para. 1.4 of the Code would provide an absolute proscription against a sexual relationship with a client which was not the case. He said that Para 1.5 applied to clients not former clients and Para 1.6 which dealt with former clients was more nuanced requiring consideration of several factors. He said that if client included former client then Code 1.4 required a permanent ban whereas Code 1.6 required consideration of events. He said the two could not be reconciled. Mr Coppel said that at Para 10 the UKCP suggested all the conduct was unprofessional but that was not how regulatory proceedings worked, there was no roving inquiry. The UKCP had failed to understand that the Code gave

particularity to misconduct and registrants consulted the Code to see what they could or could not do. He said that Para 1.3 referred to past clients but the Registrant did not exploit anyone. Mr Coppel said that the Code applied to clients but where it applied to former clients it was spelled out.

Decision of the Panel on Client/Formal client

25. The Panel accepted the advice of the Legal Assessor which included the reminder that all decisions are guided by the overarching objective of public protection. Current fitness to practise is the issue but it is based on past conduct which may be professional conduct or personal conduct outside practise. Regarding the issue of client/former client that was a question yet to be determined. The terms client and former client are not defined in the Code and Para 1.6 hinted at why this may be so. Whether a service user remains a client is a continuum/spectrum of fact that requires judgement in each case. The Code refers in the main to 'clients' and where there is the prospect of extra-professional relationships it says to take care and assess the facts to see if there is a risk – one risk may be that a registrant may regard someone as an ex-client when in fact they remain a client in professional terms. The Panel may have to determine all this in due course but at this point it should focus on the Allegation and Particulars.
26. Regarding Particular One, the wording required the Panel to consider whether the fact of the Registrant's dismissal or the factual basis for it were incongruent with what is expected of a UKCP registrant. Whether the Registrant regarded **A** as an ex-client was not the issue although what the Panel decided on this may inform whether various parts of the Code are or are not breached. The question for the Panel at this stage was whether conduct complained of (dismissal and reasons) called into question the Registrant's registration.
27. Regarding Particular Two, several breaches of the Code were argued by the UKCP but, whilst breaches of the Code may evidence misconduct they did not necessarily prove it. What breaches may or may not apply in this case may depend upon whether **A** was a client or past client of the Registrant. The panel may ask itself the question – 'if a registrant started seeing his ex-client who remained a client of his employer and provided support or friendship, may that call into question their fitness to practise?' The Allegation has two aspects (two particulars) – finding of another body and misconduct.
28. The Panel noted that Mr Coppel's submission was framed as a 'gateway' through which the case should not go. Mr Shephard rejected this and submitted the case should continue. The Panel concluded that at this stage it was determining what may occur – in terms of whether certain alleged facts may be proved or not and what inferences could be drawn. It was not determining whether for example **A** was a client or ex-client of the Registrant since this was a decision to be made on all the evidence at the end of the case.

29. The main thrust of Mr Coppel's submission was to the effect that the Registrant's suspension absolved him from almost all professional responsibility toward **A** save those in the Code that referred to a former client. As such the case was misconceived and should be stopped. That is not a proposition with which the Panel agreed. First, the Panel was of the view that whether **A** was the Registrant's client or ex-client during the period complained of was a matter of fact yet to be determined. His employment status may be an indicator but it was not determinative particularly since here was an ongoing relationship between **A** and the Registrant. In that sense the submission was premature. Second, the submission fell on the issue of public protection since, taken to its logical conclusion, it meant that if an employer terminated a contract or removed an offending employee/registrant this placed patients at greater risk because the employee/registrant was no longer bound by the majority of the Code. This further illustrated the point that the question of client/former client was a matter to be decided upon at the end of the fact-finding stage after all the evidence had been heard. Once that had been determined any issues that flowed from that finding could then be determined. To do otherwise did not protect the public.
30. The Panel first considered Particular One and asked itself 'whether the finding of gross misconduct and the reasons for that finding, viewed from either the position of the NHS or potential breaches of the Code called into question the Registrant's suitability to be on the register?' At this stage the Panel was not determining whether registration was impaired but simply whether it was called into question. The Panel concluded that it was. The Registrant was dismissed for gross misconduct relating to what was said to be an improper relationship with **A** a vulnerable service user who was a client or former client of his and who remained a client of his employer. This relationship continued after the Registrant's suspension and numerous concerns were raised by the UKCP directly relating to his professionalism and judgement. The finding of gross misconduct and/or the reasons for that finding were both matter of legitimate concern to the Registrant's regulatory body the UKCP.
31. Turning to Particular Two, the Panel first considered the Registrant's employment status and the time-period during which the matters complained of occurred. The Panel concluded that the NHS Trust may not have regarded **A** as the Registrant's client but there was some evidence to suggest he still did or acted as if she were. Even if this was not the case, she was a former and very vulnerable client who he saw and with whom he remained in contact for many months after his suspension. There was a clear danger that she may or did regard herself as his client and that he caused that danger through continued contact. He had a professional responsibility toward her whether she was his client or his ex-client. His suspension did not absolve him from his professional responsibility in the way argued by Mr Coppel. The question is what responsibility he had and how he exercised it since, regardless of his suspension, he maintained contact with her. Again all of these were issues to be

considered at the end of the evidence and, they may be affected by whether A was a client or an ex-client of the Registrant.

Announced Decision

32. *Mr Coppel raised what he has referred to as a “Gateway” issue that he suggested terminated much of the case against the Registrant. In short he submitted that because the Registrant was dismissed for conduct relating to a current client of his employer but an ex-client of his it does not found a good case to be heard by this panel. Mr Coppel submitted that the 2009 Code is mainly referable to a registrant’s current client not a former client and as such the majority of the alleged breaches of the Code are not capable of proof.*
33. *However the status of the client A is only one factor in the case. The case against the Registrant is whether his current fitness to practise is impaired either by the findings in the NHS case or by misconduct. Those findings are not to be relitigated before this Panel.*
34. *The NHS case concerned A a one-time client of the Registrant. He was suspended from his then NHS employment but A remained a client/service user of his employer. The Registrant continued to see A in what he described as a low-level personal capacity but that description was rejected by his employer. Thirteen matters were found proved against him and he was dismissed.*
35. *Mr Coppel argues that A ceased to be a client of the Registrant the moment he was suspended and because A was thereafter not a current client of his he did not breach the 2009 Code save in some isolated fashion.*
36. *Mr Shephard argued that given the length and type of professional relationship prior to suspension and from their relationship after suspension, A remained a client of his despite that suspension.*
37. *Whether or not A was a client of the Registrant at the time of the allegations is a factual issue that has not been determined and it is premature to consider that question until all the evidence has been heard. The Registrant’s suspension is one factor to take into account but it is not determinative. The issue of client or former client may or may not be relevant to alleged breaches of the 2009 code but it is not determinative of the case and, that issue has not been decided.*
38. *It is open to a Panel to conclude that the fact of this Registrant’s dismissal for gross misconduct based upon conduct with a client of his then employer who was a client or previous client of his is something that calls into question his fitness to practise regardless of any alleged breaches of the Code.*

39. *Whether this or any other Panel makes any adverse finding upon that question is of course yet to be determined.*
40. *Furthermore, it is open to a Panel to conclude that A remained a client of the Registrant or was a previous client to whom he had particular responsibility and that he did not meet those responsibilities as evidenced by the facts found against him by his employer. Some of these facts may arguably found breaches of the Code depending upon A's then status. From that it may be that an issue of misconduct arises but that too has not been determined.*
41. Following the above determination the Panel retired for the day with Mr Shephard asking for time to provide an evidence matrix. At the start of the second day the charges were read out. Mr Coppel raised further comment upon the Allegation.

DAY TWO

42. Regarding Particular One, Mr Coppel asked whether the mere fact of the Registrant's dismissal for misconduct breached the Code. In addition, he asked whether what was recorded at p48 of the bundle together with the NHS's finding that the facts amounted to gross misconduct were to be taken as read without this Panel making findings of fact upon these issues. Mr Coppel asked in the alternative 'was it the case that count two was linked to count one and that the UKCP had to prove both the factual occurrence complained of and the breach alleged?' Mr Coppel said that if a prosecuting body laid multiple charges it could not rely on the same facts to prove them thus if A murders B then A is not also charged with assault still less is it open to a court to find both counts proved. Mr Coppel then referred to several of the NHS findings as reflected in the Allegation and said Particulars One and Two first covered the entire case and then each complaint individually. This multiple charging needed to be rectified. He submitted Particular One should simply read 'is the mere fact of dismissal a breach of the Code'. Thereafter, for each matter in Particular Two the UKCP should set out which of the thirteen NHS findings were relied on, the facts supporting this and the date of occurrence. Finally the UKCP should identify the clauses of the Code said to be breached. Once it was used for one allegation it could not be used in another.
43. Mr Shephard read Particulars One and said it clearly and expressly stated the decision and the findings were incongruent with registration. Regarding Particular Two he submitted the decision by the NHS was evidence of (un)suitability to be on the register and the Panel was entitled to rely upon the fact of the dismissal and the findings of fact by the NHS. Mr Shephard said the Particular identified the alleged breaches. He said that Particulars One and Two were distinct, with no duplicity and were permitted by the Code. Regarding the date of each

occurrence he submitted the evidence matrix made that clear. Mr Shephard then proceeded to open and present the case for the UKCP.

The UKCP Case

44. Mr Shephard opened the case and stated that all of the facts alleged were covered by Code 1.3 (not to exploit a current or past client) as set out in Particular 2(c). This applied to all the underlying facts found proved by the NHS save for those at Nos. 7, 8 and 13. He said Code 1.3 captured everything whether **A** was a client or former client. Regarding Code 1.6 Mr Shephard said this emphasised certain matters were to be taken into account regarding former clients, the emphasis being on time-elapsing and exercising reasonable care. He said that again any issue of client/former client was covered by these Codes (1.3 and 1.6).
45. Mr Shephard took the Panel through the evidence matrix. This set out Particular One (Charge 1 as he called it) and the specific findings by the NHS disciplinary process that were relied upon by the UKCP. The matrix then set out Particular Two (Charge 2), the allegations found proved by the NHS disciplinary panel, the evidence relied upon and the comments, including factual admissions, made by the Registrant. The matrix then sets out specific alleged breaches of the Code relating to each subparagraph found proved in the NHS proceedings.
46. Regarding Particular 2(h) (protecting sensitive personal information) he said this relied upon the Schedule of NHS findings in particular Nos. 3, 9, 10, which referred to information, No.12 concerned concealment and No.14 which dealt with contact. He also referred to Code 1.8 which requires that a registrant must not harm or collude in the harming of a client or client of another. The Registrant saw **A** for a year after his contract was terminated. Mr Shephard went through the above mentioned Schedule of NHS findings noting that Nos. 7 and 8 were not relied upon and that No.5 was only found proved in part.
47. Regarding the other NHS allegations proved he said Nos. 1 and 2 were that the Registrant used his personal mobile and email to communicate with **A**; No.3 he disclosed personal details about himself; No.4 they met socially; No.5 the letter which he was found to have written in part; No.6 the £250; Nos.3 and 9 he shared information about other clients; No.10 he discussed the previous investigation; No.11 he offered her a job; No. 12 he told her not to disclose their personal contact and colluded in deception; No. 13 he failed to inform the Trust; No.14 there was contact after the suspension; No.15 he sought to solicit her support. Mr Shephard said that there was evidence in the bundle that supported each of the NHS allegations and many were not actually disputed – the Registrant did not deny use of personal emails, he did not deny the giving of money, he exchanged family photographs, they met socially and in a private clinic.

48. Regarding the letter Mr Shephard said the Registrant's admission was qualified but that there were matters of evidence that called that qualification into question such as his WhatsApp texts on which he said he 'had written something and it was ready for signing'. Regarding No.6 the £250 Mr Shephard observed that in the disciplinary the Registrant said he had no recollection or records of this however in the appeal he said that it was a loan between friends which was the stance he now maintained. Regarding No.9 and the provision of detail about other patients, this was first denied in the Trust disciplinary proceedings but when texts about this were revealed he sought to explain his disclosure. Regarding No.11 Mr Shephard said the Registrant was trying to get a job for A because he saw this as part of his role despite this being, on his case, well after A ceased to be his client. Regarding No.12 (not to tell anyone) this was denied in the disciplinary proceedings but it is in the WhatsApp messages. As to No.14 Mr Shephard said the Registrant felt an obligation to remain in contact with A because she was dissatisfied with her therapy They were clearly discussing therapy in late 2018. He now said her desperation made him feel responsible and he wanted to help. Finally regarding No.15 he asked her for a testimonial. He denied this but when it was pointed out to him he said it seems he did.
49. Mr Shephard then set out the history of events from when the Registrant was A's psychotherapist in 2014 – 2017, the various complaints against the Registrant, their investigation, his suspension and the termination of his contract with the NHS Trust. Mr Shephard then outlined the course of the case from the application for an interim order in 2019 to the hearing in April 2023 which was adjourned to this hearing.
50. Turning to Particular Two Mr Shephard said the concerns were set out in sub-paragraphs a–n along with the Code said to have been breached. He then again set out which of the NHS allegations (Nos.1-6 and 9-15) were relied upon to prove each of the subparagraphs.

Submissions at the close of the case for UKCP

51. Mr Coppel made four submissions at the start of which he said he was 'setting out the stall' for the Registrant which suggested it was an opening address. However as it progressed it was not clear whether he was opening a case, making a submission of an abuse of process and/or a submission of no case to answer. Following inquiry Mr Coppel confirmed that he was not alleging abuse of process but he was making a submission of no case to answer.
52. Whilst the four submissions, responses and advice have been separated below for ease of reference, the submissions were presented in one address by Mr Coppel with one response from Mr Shephard and one compendious advisory from the Legal Assessor.

First Submission

53. Mr Coppel pointed out that the factual matrix provided to the Panel by the UKCP did not refer to any breach of Paragraph 1.8 of the Code however, Mr Shephard had specifically relied upon such an alleged breach. Mr Coppel submitted that the UKCP's reliance on Code 1.8 was unacceptable. He said it was a breach of the Panel's direction for a matrix, it was unfair to the Registrant and that the Panel 'should not entertain this as a basis for going ahead'. He said that 'entertaining going ahead on this basis caused serious unfairness and called the whole process into question'.
54. When asked to clarify if he was saying that the UKCP placing reliance on this section of the Code meant the entire hearing amounted to an abuse of process Mr Coppel said that it did not but it supported the Registrant's view that the UKCP's process was driven by an 'animus' toward him.
55. Mr Shephard submitted that the Panel was entitled to look at the entirety of the Code and paragraph 1.8 was just one part thereof.
56. The Panel accepted the advice of the legal assessor which included that a Registrant should know the case he faces and, that the Panel should consider the entirety of the Code and come to its own conclusions regarding what, if any, sections of the Code were broken. In so doing it could accept or reject the breaches of the Code alleged by the UKCP. If there was unfairness as Mr Coppel contended this might be met by allowing time for him to consider and advise the Registrant. In addition, the Panel should avoid consideration of "animus" and consider the evidence upon which the allegations were based. Looking at alleged motive by either side was unlikely to help in assessing the evidence and may not be in the Registrant's best interests let alone the public interest.

Decision on First Submission

57. In making this and other decisions the Panel kept in mind that the overarching objective of these proceedings is to protect the public.
58. The Panel noted that paragraph 1.8 of the Code was not amongst those listed as allegedly breached in Particular Two of the Allegation. Whilst it was unfortunate that the UKCP had not made this clear from the outset they had now done so. Whether the UKCP relied upon that or any other alleged breaches, it was for the Panel to determine which parts had been breached if any. The Registrant was now aware of the concern raised by the UKCP that Code 1.8 was allegedly breached. The Panel noted that Mr Coppel did not ask for time to take instructions or advise upon this issue.

59. The Panel kept in mind that meeting the overarching objective required consideration of all relevant matters. Mr Shephard had raised Code 1.8 as relevant. Whilst Mr Coppel complained of this saying it caused 'serious unfairness' and 'called the whole process into question' he did not explain what that unfairness was nor why the whole process of hearing the case was now in question. When asked about this he resiled from an alleged abuse and it was somewhat striking that neither he nor the Registrant felt so discomforted or disadvantaged as to require time to consider their position. Had they evidenced any unfairness it would have been considered. Had they asked for time it would have been provided.
60. The Panel did not consider that raising Code 1.8 was so unfair as to mean the whole proceedings were called into question nor did the Panel perceive it to be evidence of an animus held by the UKCP against the Registrant. Rather it had the appearance of an issue raised by Counsel in the hearing as the case unfolded. It was an issue that was evident on the papers. It having been expressly raised by Mr Shephard, Mr Coppel and the Registrant now had the opportunity to deal with it if they chose to.

Second Submission

61. Mr Coppel submitted that Particular One of the Allegation was 'not properly constituted'. He said it was not acceptable for a regulator to level a charge against a registrant in the terms "Your fitness to practise is impaired" without any identification of a Code that was contravened. He said there was nothing in the form of a code-breach that identified why the Registrant's fitness to practise was impaired and that the UKCP's preferment of such a charge was to misunderstand the whole complaints and conduct process. He said this was because it was only from a contravention of the Code that a panel could conclude fitness to practise was impaired.
62. Mr Shephard responded by stating that the UKCP placed reliance on paragraph 2.1.5 of the Complaints and Conduct Process Rules (the CCP) and that further identification of the complaint was not required.
63. The Panel accepted the advice of the legal assessor which included that the Registrant faced one Allegation that his fitness to practise was impaired. The UKCP sought to prove this in two ways. One was in reliance on a finding by an employer pursuant to Rule 2.1.5 and one was through misconduct and breaches of the Code. The charge was constituted according to Rule 2 of the UKCP Rules.

Decision on Second Submission

64. The Panel reminded itself of Paragraph 2 and 2.1.5 of the CCP which provides as follows.

SCOPE OF THE COMPLAINTS AND CONDUCT PROCESS

2.1. UKCP may consider any complaint, relating to any of the following, to be evidence that a Registrant's suitability to be on the UKCP register is called into question:

2.1.5. a decision by: a body in the UK responsible for the regulation of a health, social care or other relevant profession; or an employer, to the effect that a Registrant's suitability to be on the UKCP register is called into question.

65. The Panel concluded that the wording of Paragraph 2.1.5 is clear and stipulated that the UKCP could rely upon the decision of a registrant's employer provided that decision called into question a registrant's suitability to be on the register – i.e. it called into question his fitness to practise. That is not unusual in Regulatory proceedings and is a position with which the Panel was familiar. It is specifically permitted by Paragraph 2 in the same way as reliance may be placed on other matters such as a conviction or decisions of another healthcare regulator. To do otherwise would require the re-litigation of a matter or matters already proved before an authorised body such as a court, healthcare regulator or disciplinary tribunal. In this case, the UKCP relied upon the decision of a disciplinary tribunal held by the NHS Trust that employed the Registrant. They were entitled so to do.
66. The word "impaired" is a word in common use. It is a term that is familiar to advocates and panels in regulatory proceedings and indicates that a registrant's fitness to practise without restriction is in question. The Panel had no doubt that such a basic term will have been explained to the Registrant and, it noted that he had faced such an allegation of impaired fitness to practice before a UKCP panel in 2019 when he was represented by Mr Coppel. The Panel had no reason to believe that the Registrant did not understand the term.
67. The Allegation faced by the Registrant is that "For the reasons set out above [namely particulars one and two] your fitness to practice is impaired by reason of misconduct and/or decision of another body". The Panel regarded the wording as clear and providing two routes to proving the Allegation. One by way of misconduct and the second by way of the decision of another body.
68. The UKCP's reliance on the decision of the NHS disciplinary process as set out in Particular One was a way to prove that allegation according to the UKCP's Process. It did not require further breaches of the Code to be enumerated as contended by Mr Coppel. It was a standalone allegation. The Panel observed that the second sentence of Particular One reads thus: "*The decision and findings which led to your dismissal as set out at Schedule 1 is incongruent with what is expected of a UKCP registrant and related to your practice as a psychotherapist.*" The term 'incongruent' means not suitable or not fitting. Particular One thereby clearly 'calls into question' the Registrant's registration.

69. The Panel determined that there was evidence of a decision and findings by the Registrant's employer. The issue in Particular One was whether that decision and the findings (ie the reasons for it) were incongruent with what may be expected of the Registrant – ie did they or did they not call into question the Registrant's suitability to be on the register and thus evidence impairment of his fitness to practise. These were decisions yet to be made by this Panel and some were in later stages of the hearing process that may not even be reached.
70. As for Particular Two, that set out several alleged breaches of the Code and were said by the UKCP to be the foundation of the allegation of misconduct. Misconduct is again a word in common use and again the Panel considered that it would have been explained to the Registrant and, for the reasons above, it had no reason to doubt that he understood what it meant.
71. The Panel concluded that the Allegation and the individual particulars were clear and were properly constituted.

Third Submission

72. Mr Coppel said that the UKCP had still not set out when **A** ceased to be a client of the Registrant and so became a former client. He said the Panel had already made it clear this was a matter for it to determine but the UKCP had to say when they thought the change from client to former client occurred. He said the UKCP said it did not matter. Mr Coppel said the defence position was clear namely that there was a therapeutic relationship from 2014 until 23 September 2017 when it was "forcibly terminated" by the NHS Trust suspending the Registrant. At that point **A** ceased to be a client. This was not a case where a relationship petered out, it was decisively terminated and it was not in the gift of **A** or the Registrant to resurrect it. He said this was when any clinical involvement ended and gave a fixed clear date when **A** ceased to be a client and became a former client.
73. Mr Coppel said the UKCP had a problem because they were unable or unwilling to identify a date and, other than the 23 September 2017 there was none. He said this was the only basis on which the Panel could proceed.
74. Mr Shephard said the position of the UKCP was clear namely that **A** continued to be a client of the Registrant for the purposes of this case. **A** did not cease to be a client. He said there was a distinction between the contractual termination and **A** remaining a client. He said that even if he was wrong about that, the Registrant's conduct was captured within the Rules.

Decision on Third Submission

75. The Panel accepted the advice of the Legal Assessor which included that it is the judge of the facts and, whether **A** ceased to be a client or remained a client was a matter of fact yet to

be determined taking into account the two positions contended for in argument. However, at this stage, this now being a submission of no case to answer, the Panel was looking at whether a panel properly directing itself according to law could find that **A** remained a client. (See below regarding advice on no case to answer.)

76. See below for decision.

Fourth Submission

77. In his final submission Mr Coppel asked, 'what is the case about?' He said the facts were, for the most part, not in dispute. The messages, contents and dates were clear. He said allegations 13 and 15 (in the NHS findings) were not the mainstay of the case nor was the private clinic issue. None of the other facts – communications, meetings etc after 23 September 2017 were in dispute.

78. Mr Coppel said that **A** had profound therapeutic needs and saw the Registrant for a long period without complaint. This relationship was terminated without choice by **A** or the Registrant. He then asked, "is it a clear breach of the Code for the Registrant to communicate in any way with his former client no matter how trivial the communication?" Mr Coppel said that if the answer was 'yes' the Panel must say so because all registrants would need to know this. If the answer was 'no' then, given the therapeutic relationship, its termination, the needs of the client, how these were met or not, was post-termination communication outside the bounds of what a psychotherapist should reasonably do subject to the Code? He said that different psychotherapists would act differently and the Panel would have to consider each communication and ask whether it was or may be permissible or was it outside anything that a psychotherapist would do? In answering that question Mr Coppel said that the time-period was relevant with the relationship ending on 23 September 2017 and the final contact being in July 2019. He said in cases such as this all the information was simply swept together and that meant one lost sight of what occurred. He said there were sporadic exchanges interspersed with periods of no communication. This was shown in the NHS investigation report.

79. Mr Coppel took the Panel through the various communications and suggested they fell into seventeen sequences which he then described. He said that **A** instigated the contact and asked, 'was the Registrant's response(s) in length, content and sequence outside what any registrant could do consistent with the Code?' He said the answer was 'no'.

80. Having said this was a submission of no case to answer Mr Coppel said that the Panel would hear more from the Respondent regarding **A**'s needs. He said the UKCP presented its case as if it were concerned for **A**'s wellbeing but there had been little said about the forcible end to the therapeutic relationship and where that left **A**. There was no complaint during

2014 – 2017. A had profound needs that continued after 29 September 2017. There had been three years of continuity, trust and reliance on regular treatment which was brought to an end yet the UKCP said nothing about A. He said the case could not be determined without considering the forcible termination of the therapeutic relationship. Mr Coppel said the Registrant's response was not a breach of the Code. There was no misuse of the relationship for emotional, sexual or financial gain. Instead the UKCP wanted an outcome against the Registrant against whom it had an animus because the UKCP could not get out of its mind the fact that it had failed in a previous case. He said the case should be dismissed.

81. Mr Coppel was asked to clarify if this was an argument for abuse of process or of no case to answer. He said that he was not alleging abuse of process albeit the UKCP's conduct was consistent with that. He said the case was not properly constituted. He said it was not viable but if the Panel rejected that submission it should consider the evidence and stop the case because there was no evidence.
82. In response Mr Shephard submitted that the WhatsApp messages referred to by Mr Coppel were only part of the picture. He submitted that when A initiated contact the Registrant's response was itself misconduct however, there were other communications to consider which he took the Panel to. These included communications that were initiated by the Registrant and attempts to call on the phone. He described the latter as suggesting that the two were in the vicinity of each other and implied meeting. He said there was evidence of the Registrant contacting A.
83. Mr Shephard rejected Mr Coppel's submission that there was no evidence. He said there was evidence which was not tenuous but clear. He said the overarching point of all his submissions was that there was a case to answer.

Decision on Third and Fourth Submissions (no case to answer)

84. The Panel accepted the advice of the Legal Assessor which included the advice that this Panel does not make advisory declarations regarding other registrants and third parties. Its remit is to determine this case on the facts presented and whether the contact between the Registrant and A was appropriate or not taking account of all the circumstances including those such as length of treatment, his suspension, A's circumstances, his assertions he acted appropriately, A's needs not being met by the Trust that suspended him, did his conduct breach a Code, if it did was there good and sufficient reason that meant it was not misconduct. These were all matters that a panel may wish to consider in due course but, at this point this Panel was considering whether there was a case to answer.
85. The Panel were advised concerning the cases of Tutin v GMC [2009] EWHC 553, R v Galbraith [1981] 1 WLR 1039 and R v Shippey [1988] CLR 767 and to look at the evidence on each fact

or particular in turn and consider whether there was sufficient evidence for a panel properly directing itself to find that fact or particular proved. Thereafter to consider whether that potentially provable fact or particular may be sufficient for a panel to make a finding of misconduct and thereafter impairment. The Panel was not to 'strive' to see if there was a way to prove each fact/particular but to assess whether there was a fair, reasonable and rational basis for proof which meant there was a case to answer.

86. The Panel first considered Particular One of the allegation.
87. The Panel noted that by reason of Paragraph 2 of the UKCP Complaint and Conduct Process the UKCP "[2.1] may consider any complaint, relating to ... the following, to be evidence that a Registrant's suitability to be on the UKCP register is called into question: [2.1.5] ... a decision by ... an employer to the effect that a Registrant's suitability to be on the UKCP register is called into question". In this case the UKCP alleged that the fact of and reasons behind the dismissal were incongruent with what was expected of the Registrant and thus called into question his suitability to be on the register.
88. It was not disputed that there was a determination by the Registrant's previous employer to dismiss him from his employment as a psychotherapist working for the NHS Trust. The reason for that dismissal was given as gross misconduct and centred around the Registrant's relationship with a patient identified as **A**.
89. As stated above, the Panel concluded that Particular One is properly constituted. The question for this Panel at this half-way point was whether there was sufficient evidence for a panel properly directing itself to conclude that the fact of the dismissal and/or the reasons for that dismissal as set out in Schedule 1 in the papers could be proved and whether they, if proved, were incongruent with what was expected of the Registrant. If they were, could that panel go on to conclude that the Registrant's fitness to practice was thereby impaired.
90. The Panel concluded that these questions could be answered in the affirmative. There was evidence of a dismissal from employment as a psychotherapist for gross misconduct. It related to the Registrant's personal and/or professional relationship with a vulnerable patient **A** and there were multiple adverse findings made in the NHS proceedings. A panel may find the dismissal proved and could find that this and the reasons for it were incongruent with registration. From this a panel could conclude that such incongruity raised an issue over the Registrant's suitability to be on the register and that his fitness to practice was impaired. Whether this Panel would come to such conclusions was to be determined at the end of all the evidence and following submissions from Counsel and advice from the Legal Assessor.

91. The Panel next considered Particular Two and the various sub-paragraphs setting out alleged breaches of the Code and said to constitute misconduct.
92. An issue within this case was whether **A** *immediately* stopped being a client of the Registrant's when he was suspended from practise and *immediately* became his former client. That was the position contended for by Mr Coppel on behalf of the Registrant in his third submission. Mr Shephard's position was that **A** remained a client of the Registrant's regardless of the contractual position.
93. The Panel concluded that it was open to a panel to determine that **A** remained a client of the Registrant regardless of his suspension. There was evidence of continued contact, support and advice. A panel may conclude that there continued to be a client-practitioner relationship despite his suspension. Whether this Panel would do so in this case was yet to be determined.
94. The Panel considered each sub-paragraph in turn and found that a panel properly directing itself as set out above could conclude that there was evidence to support findings of breaches of all of the Codes except for paragraphs 2f (Code 1.7) and 2g (Code 3.2). Regarding Code 1.7 (respecting autonomy) there was insufficient evidence for a panel to conclude that the Registrant did not respect **A**'s autonomy. Regarding Code 3.2 (confidentiality), whilst there was evidence from which a panel could conclude that the Registrant disclosed information from or about other patients some of which may have been sensitive, there was no evidence that it was personally identifiable.
95. Regarding paragraphs 2a – n (excluding f and h) the Panel had regard to the whole of the bundle and in particular the areas of evidence highlighted in the evidence matrix provided by Mr Shephard. The Panel made the following findings regarding each paragraph as to what a panel properly directing itself could do.
96. There is evidence of continued contact, support and advice from which a panel may conclude that the Registrant provided therapy and this was not in **A**'s best interests as evidenced by her confusion and distress (2a). It could be regarded as exploitative and disrespectful of her as could asking for a reference for a company from which she had not received a service (2b and 2c). The latter was capable of being regarded as colluding with **A** in a harmful way (2m). A panel could find that the Registrant's continued contact with **A** was both personal and professional, it was damaging to **A** and that the Registrant had not considered this fully if at all. Nor had he considered that after years of therapy the therapeutic relationship may not have ended with the termination of his contract (2d , 2e and 2i).
97. There is evidence in the bundle that the Registrant told **A** of matters that had occurred in therapy sessions with other patients. If a panel accepted that evidence it could conclude that

the Registrant failed to respect or protect the confidentiality of others (2g). A panel may conclude that the evidence of A's distress and confusion and the length of time during which the Registrant maintained contact with her was evidence of a failure to examine their relationship continually and critically (2j) as well as a failure to properly refer her to another professional (2k).

98. There is evidence that the Registrant self-reported but not that he disclosed potential breaches of the Code. Indeed his case is he did not breach the Code. A panel may conclude that the Registrant did fail to report potential breaches of the Code (2l).

99. Given the above potentially provable breaches is is open to a panel to conclude that the Registrant failed to uphold the reputation of the profession and/or promote public confidence therein (2n).

100. In respect of all such potential findings this Panel reiterates that it has made no such findings. It would only determine the facts of this case after hearing all the evidence, submissions my Counsel and advice from the Legal Assessor.

101. The Panel having determined that there was a case to answer the Registrant elected to give evidence.

Oral evidence – the Registrant

Evidence in Chief

102. The Registrant gave evidence and adopted his signed statement as his evidence. He confirmed the contents to be true. Mr Coppel then took the Registrant through his statement paragraph by paragraph (not repeated herein) and asked some supplementary questions. The Registrant's statement deals with the Allegation, his background, the first disciplinary matter before the NHS Trust and his first suspension, the second disciplinary matter and these proceedings, the NHS and UKCP rules, his relationship with A and their contact, factual matters in dispute and those agreed, the second disciplinary proceedings, his self-referral to the UKCP and judicial review of the UKCP, his disagreement with the NHS investigating officer (GM), the decision by the Trust to sack him, comment and conclusion.

103. From this statement there are a number of broad strands to the Registrant's case: (i) there was no complaint by A when she was his client and he was her psychotherapist, (ii) their therapeutic relationship was ended by the NHS Trust from which point she was not his client, (iii) since A was no longer his client he could and did engage in a 'low-level social relationship' with her provided he considered their previous professional relationship and whether that friendly relationship was detrimental to her, (iv) he accepted the fact of most of

the contact and incidents complained of, but denied any impropriety and denied they evidenced breaches of the Code because A was an ex-client and there was no detriment, (v) the NHS disciplinary proceedings and the decisions were flawed and unreliable, (vi) the NHS and the UKCP proceedings were tainted by animus / not brought in good faith.

104. The Registrant said that his solicitor had tried to engage the UKCP in correspondence to narrow the case issues. The UKCP did not say whether they regarded A as a client after termination of the therapeutic relationship. The Registrant confirmed that he recognised the UKCP standards (the Code) and said he no longer had a private practice. He said he had a Community Interest Company "EASE", which required the majority of company income to be moved from one geographical area to another where the company work could be continued.

105. The Registrant confirmed that between 2004 and 2017 he was not the subject of any investigation but since 2017 there had been two disciplinary processes. The first involved allegations of (i) discharging a client inappropriately and offering them private services, (ii) offering employment if they accepted private services and (iii) the suggestion these allegations indicated a wider pattern of non-adherence to rules. The Registrant said these were serious charges but that they were only upheld in part on the basis that he had discharged the patient too early since he was on a waiting list. He explained that he had been a patient of the NHS Trust for a long period. He had been discharged and then re-referred and the Registrant was asked to review his case. He conducted a review of the notes, dates of which would be on the NHS system. He discussed the patient's wants and needs with him, and the Registrant suggested an appropriate course to him. He agreed to use voluntary services available in Barnet and they subsequently met to discuss his discharge. One of the people working at EASE had been through a volunteering service and the Registrant arranged for the two to meet. Following this the patient was discharged. After this the Registrant said the NHS Trust received a complaint about the treatment the patient had received but that he did not want the Registrant to get into trouble. He said it all dragged on because he was denied access to the clinical records which would have supported his version of events.

106. Following his suspension the Registrant said he was instructed not to set foot on Trust premises and not to contact anyone at The Trust. He said 'because of that A ceased to be my client . . . I was not allowed to have any contact with anyone being treated, no access whatsoever.'

107. Regarding the above allegations the Registrant said they were only proved in part and he received an informal warning. He then returned to work. He appealed but this was rejected. He said that EASE was not for personal gain and there was no connection between it and the volunteering service other than the fact that an EASE volunteer had been through the Barnet volunteering service.

108. Regarding A, the Registrant said that although their professional relationship lasted three years there were two breaks, when she was at work and when she had her second child. He said her case was complex and interesting. He first met her at ██████ Community Hospital where she attended with her 3yr old son "C". She was nervous but he introduced himself to her and her son before facilitating the child being with his father. He said there were no complaints whilst he was her psychotherapist. He said her difficulties remained but were being managed. The early meetings were designed to support her return to work. She was unable to return to work in a trauma unit but worked as an assistant 'tidying up when people died' but this exacerbated her anxiety. He said therapy sessions were generally weekly and a year was considered a long time for therapy. He said that historically patients were only seen for about ten sessions but the department thought some patients needed longer and he ended up with the people who had the most difficulties from experiencing violence and trauma. He became the therapist for these difficult long-term patients some of whom were violent. The Registrant said A got to the point of applying for work and this ended her first period of treatment.

109. The Registrant said that A rereferred herself through her GP because she was anxious and unable to cope. A had lost her nan to cancer and she also felt responsible for her estranged parents who were in a poor state due to drug abuse. She had also lost two siblings. The Registrant said he tried to refer the family to a social worker and as services degraded so the work of a psychological therapist expanded. At times he went to social services to advocate for clients. He did so for A since she was unable to work as she wished and her partner was becoming unable to cope. They accessed a service called Hub of Hope. A said she was pregnant in March 2015 and then took time off to look after her baby in 2016 but resumed contact with him in summer 2016. There were no further breaks until his suspension in September 2017. He said she was still looking for work and he was aware of a service that needed a healthcare assistant so he introduced her but it later became clear she was not fit for work at all. He then described further family and personal trauma experienced by A.

110. Regarding the termination of their therapeutic relationship he said he knew nothing of any alternative support until she contacted him and said she had been offered ten sessions in December 2017 but she was too scared to attend the service. He said in December A was offered a meditation technique but this was not helpful. He had not discussed this with colleagues because he was precluded from doing so. He had not discussed it with UKCP.

111. Turning to his second suspension the Registrant said this was an allegation of failing to maintain proper boundaries because an NHS client from 2002 became a private client in 2016. He said he was found to have mismanaged a therapeutic relationship but had acted in

good faith. He then detailed some of the history of this case and the time taken for the case investigation. He said the question of appropriate relationship(s) and professional boundaries were vague, unclear and there was no meaningful guidance or rules published by the Trust.

112. Looking at his professional Code the Registrant said a relationship with ex-patients is not precluded but that a registrant must exercise caution and if it was detrimental he may face an allegation. He said his understanding was that there was only a breach of the Code if a relationship with an ex-client was detrimental. Where there was no professional relationship there was no boundary and it was permissible to have a relationship provided it was not detrimental. That being the case the UKCP 'must prove my acts were detrimental'. He said that none of his acts had a detrimental impact that he was aware of. He said he was in a difficult position with his team fending off calls from A. He said he did not cause detriment and this was a view reinforced by the fact A was persistently in touch for therapy but he was not allowed to have contact with her. He said none of his contact was detrimental but it was 'hellishly difficult' dealing with the situation. A had been through a long period of therapy and this had been stopped. He was not able to respond to her. He then said 'if I am guilty of responding . . .' The Registrant said he had done things the management would regard as naughty such as helping a client with social services, helping a teacher who had done something silly to protect him from psychological harm. He said it was difficult enough being left out on a limb but it was worse when he heard that A was just not being looked after by the service. He said the letter that he helped draft showed A wanted help and the people she blamed she named in the letter. He said all he did was correct syntax and spelling.

113. The Registrant said that the NHS investigator took the view that all contact between him and A should have ceased but it does not say this anywhere in the NHS information pack. He asked, 'what was I supposed to do?' and argued there was no hard and fast rule rather he had to consider when, where how and what the nature of their contact had been and whether there was any detriment to A.

114. The Registrant then dealt with his relationship with A and its termination. He said A ceased to be his patient when he was first suspended and he did not treat her again. He said the Trust claimed to write to her to explain but he had never seen that letter and, if they had done so, she would not have been asking. He said he explained to her and felt he met his professional obligations in so doing. The registrant said he did not dispute the contact as set out in his statement including meetings, WhatsApp messages, the letter, bank statements and various messages. He said the contact was almost all initiated by A. He said they met at Prezzo in [location]. He said he met her first child and she had a second. He said A sent photos to him. He said that he felt she suffered from somatisation of her experience, carried the weight of the world on her shoulders and embodied her pain and distress. He said he did not feel able to snap shut his phone and felt disabled from helping her. The Registrant said he

specifically disputed any sexual relationship, dual relationship, breach of boundaries or UKCP rules, any disclosure of private matters heard in session with other patients, any interference with her treatment or choice of therapist and he did not encourage her to complain.

115. Regarding specific matters the Registrant said the chronology in his statement was correct. He described his contact with A as low level social contact. He said he corrected her letter. He said the £250 was a loan between friends. He said that her complaint was that he had 'dropped' her as a patient. Trust was a major difficulty taking a long time to gain and little time to lose.

116. The Registrant then dealt with the chronology of the Trust investigation but he regarded the real issue as being whether he had breached any of the UKCP Code(s). He therefore self-referred.

117. The Registrant reiterated that his contact with A as her therapist ceased after his first suspension. He never denied he had been in contact or helped her. He said he had dealt with her properly and honestly. He said she has never made a statement against him and her evidence has never been tested. He said it was "false" to suggest A remained a patient. The therapeutic relationships ended with his suspension. After that all contact was in the context of there being no patient/client relationship. He said he did not argue that all contact was permissible but that he had to evaluate any impact from contact. He said he had tried to explain to A. He described their low level social contact and then described how A wanted to complain so he corrected her letter which he did not believe to be against the rules. He said he had lent her £250 after a break of four months and he also said he could not be her therapist. He said A's confusion was understandable.

118. In conclusion the Registrant said that A ceased to be his patient and there was thus no boundary to their meeting provided he considered the impact of this. He said the NHS Trust had behaved irrationally in refusing to consider the UKCP rules and he had self-referred.

Cross Examination

119. Mr Shephard asked the Registrant about his role in NHS practise and he confirmed that he was often allocated or took on complicated or problematic cases that may require longer periods of treatment. Such patients needed time to build trust and there may be issues of attachment or potential violence. He described the multiple changes in NHS care provision such as care in the community, agenda for change, disorder-specific treatment tracks and the organisation of treatment groups. He said he was part of the psychological therapy service in 2002. Prior to that they would receive referrals from GPs. After 2005 they did not treat the 'worried well'. He said he saw patients with schizoaffective disorders as well as anxiety, depression and complex family dynamics. He was not sure who referred such patients to him

and said it may be he was the only person available. He said most patients saw him for at least six months, the majority were 6 – 12 months but some might be for years. Regarding A she was unable to work in a trauma unit and the initial aim was to get her back to work although this did not remain the main aim. She saw him weekly and she progressed to the point of returning to work but she could not sustain this. He described their relationship as sufficiently developed for A to disclose several personal and family matters that caused anxiety for her. Over time her aim changed from returning to work to being able to live her best life without the intervention of psychology services. He said it was often the case with patients experiencing PTSD or similar that the issue was management rather than cure.

120. The Registrant said that patients with high levels of trauma and anxiety often find it difficult to leave the safety of a therapeutic environment leaving services beleaguered by people who cannot cope on their own. A found it difficult to return to work, his endeavour was to get her to the point where she felt able to do so. He drew a distinction between a dependable, reliable therapist and patient-dependency. He said he became unreliable due to the suspension. He said A demonstrated a level of dependency through her complaint but that was not unusual. He said it was not initially apparent A would be a long term patient but it became apparent when she failed at her second job and had her second child. The Registrant said he was first suspended on 23 September 2017, his second suspension was from 4 December 2018, A's complaint was August 2019 and he was dismissed in 2021. He said that during his suspension he was not under the impression that A wanted to see him as a therapist.

121. Regarding the breaks in A's therapy the Registrant said the first occurred when she returned to work for some months in 2015. Subsequently he saw her for a while, then she had her second child. She was pregnant in mid-2016 and came back after a break. He said after the first break there was no way to know if she would return to therapy whereas after the second break there was 'a sort of way of knowing' but one cannot predict what will happen during or after pregnancy. He said they had discussed return to therapy before her first job and before her second child but there was no way to predict what she would do. He said that the breaks were of several months' duration – perhaps six months and he rejected the suggestion she was his patient during those breaks: "I don't accept she was a client in those six months. She was not a client". He said after the first round of therapy she said goodbye and he had no professional responsibility for her whilst she was an NHS client regarding her pregnancy.

122. Mr Shephard asked about introducing A to work and the Registrant said he knew of a multi-disciplinary place that was recruiting so he introduced her to someone who met A and her partner. This was in 2015 after she left the first session of therapy but before her second child. Mr Shephard asked about A's letter and her comment about being too scared

to attend therapy. The Registrant said that A had told him she was not prepared to attend a service that provided a phone interview and, with one relationship breaking down she did not want to return to that service. He said this was in 2018 when A was discharged because she failed or refused to attend. The conversation about her being too scared to attend therapy was in October 2018. The Registrant referred to Para. 35 of his statement and said there was an ongoing consideration of the client/former client relationship to see if the personal relationship was detrimental. It was not a one-time assessment. He said he took account of all preceding events and had to actively consider detriment when in such a relationship. Mr Shephard took the Registrant to Bundle C1 at p171 and messages dated 28 February and 2 March and suggested they evidenced detriment. The Registrant said that he was not causing detriment, A wanted him to be her therapist and if there was detriment it was caused by the issues in her life and not being able to see him. He said she felt abandoned but he had not abandoned her, he was not allowed to see her. He agreed she will feel this as abandonment but he had no purchase over the situation. He said he attempted to rearrange her perception by supporting her. He said it may sound abandoning but he had to stay within the confines of what he was allowed to do.

123. Mr Shephard took the Registrant to p266 of the bundle to further messages on 10 December. The Registrant said he did not think his actions caused detriment to A and that Mr Shephard failed to understand the complexity of the relationship between patient and psychotherapist. When asked about Para 70 of his statement where A contacted him he said that she had done so and he had explained to her properly and honestly that he was suspended from the NHS and prohibited from taking NHS patients and treating them privately. He said no NHS patients saw him privately and he said he explained he could not see her in a professional capacity. He considered the Code when making that decision.

124. Mr Shephard next asked about the letter at Bundle p209. The Registrant said that A wrote it and he had amended it because 'it was my professional responsibility to do so'. When asked if he felt responsible for her on 28 April 2018 he said no, his responsibility was set out in the Rules. He said it was his duty to assist her pursuant to the rules. A had written that she wanted to return to work but could not do so due to anxiety. He confirmed she was vulnerable and/or extremely vulnerable in some parts of her life and these vulnerabilities post-dated her period of therapy with him. Her vulnerability was why she required treatment in the first place. Part of the therapy was enabling her to express and process her feelings in a safe space, part of it was the supportive relationship, part of it was enabling him to understand her issues. The ultimate goal included aspects of catharsis and support. He said abbreviating the role was not helpful. Regarding contractual responsibility the Registrant said he did not need a contract to provide services, he could do so without charge. He agreed that A was a client of the NHS Trust and he was an assigned clinician above whom there was a

supervisor with ultimate responsibility. He was assigned in 2014 and removed in 2017 during which time A had disclosed much personal information to him.

125. The Registrant was asked about text messages and his request for an endorsement from her (Bundle pp213-218). He said he had asked her for an endorsement for his company EASE to get an award. At the time of the texts he headed up EASE and received payment by way of a nominal income and dividends capped at 11% of the company profits. He agreed that if EASE did well he would potentially gain. He agreed that on 15 April 2017 A was his client and he wrote the testimonial for her to endorse his organisation. He said suggesting he would benefit was an exaggeration but he agreed he received a nominal sum plus dividends. He agreed there was the potential to benefit financially, professionally and reputationally.

126. Mr Shephard next turned to p81 in the bundle and the statement by the Registrant in Trust disciplinary proceedings that he would not say anything he did not believe to be true. He then pointed out at p82 para 10 that the Registrant had denied any personal text communications in the period 2014 – 2017 when A was his patient and said the only communications with her was as his patient. Mr Shephard said the statement was not true. The Registrant first said that A was a patient in one particular sector of his work and he was asking for a document (the reference for EASE) in a different sector of his work'. Ms Shephard again suggested that the statement was untrue and the Registrant agreed.

127. The Registrant agreed with Mr Shephard that there were many factors to weigh up before entering into a personal relationship with a client, this included length of professional relationship, time elapsed since it ended, vulnerability past or present. He agreed that the shorter the lapse of time the less likely it would be appropriate to enter into a personal relationship and, if they were a long-term client, it would not be good to start soon. Mr Shephard suggested that if a patient was vulnerable like A it was an abuse of position to start a personal relationship. The Registrant said that her vulnerability was exacerbated by his suspension and the fact that no-one had picked up her case. He asked, 'where was she to turn to save someone she had trust in?' He then agreed that if a patient remained vulnerable it may be an abuse of position to enter into a personal relationship.

128. Mr Shephard next took the Registrant to the Bundle pp173 - 189 which contained various texts and photographs including of the Registrant and his baby on 4 November 2017. Mr Shephard suggested it was not long after the Registrant was suspended. He said that he had had an affinity with A's first child, she had got through having a second child. He was thinking of his non-availability and the photo suggesting he was not available because he had a child and, they had an affinity through both having children. He said whether it was good judgement or not was for the Panel to decide but he did not think it had been detrimental to A. He said Mr Shephard could look at it in binary terms but he looked at it broader terms

and in his mind and the mind of 'my client' it was not detrimental or unprofessional he was showing he was not available.

129. When challenged as to his use of the term 'my client' he said he did not consider her to be his client and apologised for saying that. He said there was professional consideration in respect of sending the communications but he did not consider A to be his client on 4 November 2017. He agreed that professionals needed to exercise judgement he said he did not agree with the strange notion of 'in perpetuity'.

130. Mr Shephard next considered Para 85 of the Registrant's statement in which he says he felt he had a professional obligation to provide information to her and was motivated by the desire that she should not think he had abandoned her. He then pointed to CCP Rule 9.3 and asked if this is why the Registrant felt obligated. The Registrant said his profession was a psychotherapist, his job was a psychological therapist but the two sometimes collide. He said that for all the inquiry he made he did not find in the 367 pages of NHS rules any reference to boundaries and both the NHS and the UKCP refused to say what boundaries he had breached. He said he was employed by the NHS but overseen by UKCP. He said it was his professional obligation for a number of reasons. He said the termination (of his contract) may make her feel he had abandoned her. He said that had no basis in law save for the bits the NHS harshly upheld. He said he was professionally obliged to provide her with appropriate information. He said he believed in transparency, telling her he could not see her and why. That was a professional evaluation of his obligation that he imposed upon himself and which was also imposed upon him by the UKCP.

131. Mr Shephard took the Registrant to p165 of the Bundle and a note of the NHS findings that he felt obligated to be in contact with A. He said her desperation left him feeling responsible and the regulations leave a degree of autonomy as to what level of responsibility to assume. He said he could not engage in a private professional relationship with A because if he had told A to discharge herself in order to see him that would be considered coercive behaviour by him and in any event he would not do that. It was not an option open to him. He said he was suspended in 2017 and in correspondence in 2018 she was dissatisfied with the care she was receiving so he assumed responsibility and felt he should respond to her. When asked if he felt he should 'do something' he said it was 'reductionist' to say he did it because she was vulnerable and he did not inhabit a world that boiled down to seeing her because she was vulnerable. He said she was vulnerable and this was one factor he took into account when responding to her a year after he last treated her. His assessment of her vulnerability was from the correspondence in part and, her desire to do something about the lack of treatment and support from the NHS which exacerbated her feelings of vulnerability. It was not due to what he knew from treating her although this could not be ignored. When it was put to him that he was applying his therapeutic knowledge to a personal relationship he

said 'that is a punctuated binary and combative view of me doing this or doing nothing but the answer is yes'.

132. Mr Shephard pointed to emails on p219 of the Bundle, one from A on 21 November and a reply from the Registrant on the 22nd saying 'we need to get something done'. It was suggested he did not say he was not her therapist. He replied that he ceased to be her therapist on 23 September 2017, he was not her therapist and the emails do not relate to therapy. He said the emails concerned her nan and he was writing about helping her nan who meant the world to A. The emails were about A fuming (about her nan's treatment) not about A. The reference to getting something done was a reference to the social care sector which was a mess and was to get something done for the nan or his ex-client. He said he would call later but he could not recall if he did. He said it was appropriate to send the email it was supportive and appropriate in his view even if it was not so in Mr Shephard's view. He said A was relating her concerns about her nan who was her world and her strength and Mr Shephard could infer whatever he liked. He was asked if he was providing support and he said 'yes, no, I wrote a supportive message. It is support, it is not support, it is supportive.'

133. When asked about photographs attached to the emails the Registrant said the email was clearly sent by him but he did not recall the attachments. Mr Shephard said these were at pp221 – 223 in the bundle. When he saw the images (Clint Eastwood and two mantras) the Registrant said they were not sent by him but by her. He said this was not the first time he had said this and he was crystal clear he did not send the photographs. He agreed he had sent the image at p225 (black cummin seed oil). It was pointed out to the Registrant that there was email correspondence from him referring to Clint Eastwood and words similar to the mantra but he said, 'you will never get me to acknowledge or accept that Clint Eastwood or the other statements were sent by me'.

134. *NOTE. A concern was raised as to the dates with the photo/mantras being emailed in November 2017 and the similar comments in 2019. Mr Shephard asked for a short time to clarify the information to ensure he did not put something unfairly. After a short period it became clear the information would take longer to find and, owing to the time, the hearing was adjourned. Mr Coppel said it was not helpful for a witness in mid cross-examination and he expected better. Mr Shephard pointed out that the Registrant had unexpectedly been taken through the entirety of his statement rather than just adopting it as was now the norm. When asked how long his cross-examination would take he said that depended on the answers given by the Registrant but he would do his best.*

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135. Mr Shephard provided unredacted copies of the email at p220 in the bundle showing it came from the Registrant's email address. He agreed that he had sent the email but denied that he had sent the documents on pp221, 222 and 223 of the bundle (Clint Eastwood and the two mantras). He said he was 100% sure of this. Mr Shephard took the Registrant to the UKCP investigation report (Bundle p112), minutes of an interview (p158), a letter re the disciplinary proceedings and dismissal (p43), a letter re his appeal (p68) and suggested he had never before denied sending the documents. He agreed. The Registrant said that the NHS investigator's report had been written before the investigator had read his (the Registrant's) statement. He said that at p105 in the bundle he was complaining about the NHS investigation. He looked at the minutes on p158 and agreed he had been able to correct them (p161). Mr Shephard again put that he had not denied sending the attachments nor had he said this in his own statement. He agreed and said that there was still nothing to say he had sent them and he reiterated 'I did not do this, I did not send these pictures.' When asked whether he had thought about this or thought to go back to his email to produce it to assist the Panel he said he had not and didn't know if it would be helpful.

136. Mr Shephard next took the Registrant to p204 in the bundle and the exchange regarding Prezzo which was to the effect of him saying he was there and her saying she would get in a cab. The Registrant said he could not recall how the meeting was arranged and all this was dealt with at another hearing. He said he often went to Prezzo with colleagues, he did not know if it was a chance encounter with A. He could not recall sending a prior communication and said there was none, this was all there was. He agreed he did see A and her children at Prezzo but could not recall any prior communication. When taken to his previous statements about this the Registrant agreed he had said the NHS investigator had not identified the location (p83) and that he could not recall the meeting (p156). He agreed it was an unusual and memorable event but explained that he had said this because he had not been provided with any date time or location of the meeting so he could neither agree nor disagree with the proposition. Subsequently when he was given the details he agreed he had met A. He commented he wasn't denying anything but had said he had no recollection about a lot of things and couldn't see what the problem was. When it was put to him that A attended his clinic at [location] he said he did not treat her but that she came there for the same reason she had gone to Prezzo namely to see him. She wanted to see him at his place of work for a social encounter. He said it was unusual to meet A at a restaurant.

137. Regarding A's letter of complaint (p209) about the NHS and the texts (pp205 - 207) he said 'I did not. I am adamant I did not write the letter, I corrected grammatical errors because A was dyslexic.' He said he did not correct anything factual but ensured it read properly. When taken to p205 and his email that said "I have written something ... I will feel vindicated ..." he said this was just shorthand on a social media platform. The Registrant then said he had printed the letter too. He explained that he could not complain on her behalf and

the letter was important so A had told him what to say and he wrote it. He said he had not just corrected the grammar and there were details she would not be aware of so he had written these for her. He had also called her and attempted to contact her MP since this was something that seemed to make the NHS take notice. He said he had done this for another client. He then pointed out that “bk” in the WhatsApp messages was an abbreviation for back and suggested that this was a good example of abbreviations in social media.

138. The Registrant agreed that A came to his office to go through the letter. He denied she was a client and said she came to his office and he performed a task similar to that which he had done for others. He denied it was in a therapeutic context but said he felt a personal sense of duty and responsibility to provide some support and care. He interpreted the Code as meaning he had a duty. The NHS codes did not include any boundaries so he referred himself to the UKCP to see what the boundary was. He reiterated that he could not recall how A sent the letter to him, he might have drafted it, he might have written it down, even if he typed it she told him what to say. He said he had tried to see if the MP was around by contacting his secretary. The MP’s office was very nearby. He said, ‘if I am honest I am being liberal with language’ and asked if Mr Shephard knew how a dyslexic person struggled to compose a letter. He denied the letter undermined A’s new therapist, he said it was a complaint about the new therapist but A had been traumatised by what the therapist had done. That relationship had already broken down. He said he had no idea if A was going to resume as his client. He denied that the letter could have had a negative effect and said the therapist was traumatising A. He denied exploiting her.

139. Mr Shephard next turned to the £250 provided by the Registrant to A. The Registrant again agreed he had initially said he had no recollection of this (p158) but A’s bank statements showed he had provided the money so he agreed he did. He did not check his own records. He was asked about the term ‘gifted’ in his statement (para 45) and said this was just about language he said elsewhere it was referred to as a loan and indeed it was a loan. *(At this point Mr Coppel said the documents showed it was a loan and this was the conclusion by the NHS. Mr Shephard said the point is that there was an inconsistency.)*

140. Mr Shephard took the Registrant to the NHS disciplinary letter of 30/11/2021 and the comment that at p69 it says the Registrant admitted a breach of boundaries. The Registrant said there is nothing in the NHS documentation that says he should not have contact rather the investigator Mr M had made up this hard and fast rule. He says his comment is that he is breaching a rule that does not exist. He reiterated there is no rule it is fictional and he made no such admission.

141. Mr Shephard next turned to the WhatsApp communications at pp167-173. Regarding the entry at 14/10/2018 14.40hrs he said he was explaining that he was unable to speak to

her at that time of day. It was pointed out that he called her at 15.03hrs. Regarding the 4/11/2018 Mr Shephard put that **A** says he will be there for her and his response was that he had been shafted. The Registrant replied that he had been shafted through being suspended for 14 months on a case they could not prove. During that time he could not see any clients or former clients. He said their contact was 'low level'. When asked if she was distressed he said that she was angry at them (NHS) and angry she had failed her driving test. Mr Shephard said that given she was vulnerable was this contact appropriate. The Registrant said **A** was not vulnerable while she was his patient. Her vulnerability was caused by his suspension and not getting the treatment she needed. Mr Shephard put that he did not respond. The Registrant agreed and said he did not respond regarding other communications including one on his birthday. He said she was angry at not being able to see him for the service she wanted and with no-one responding it's perfectly reasonable of her. He said he had done nothing to hurt her. He said that responding all the time was not reasonable but that did not mean he was unsupportive of her. He said the reference to being 'trapped' (22/12/2018) was because he was back at work but only assessing people. He was not seeing clients or former clients. He said it was all there in black and white that she was hacked off. The reference to letting her down (6/1/2019) was because he was hamstrung and could not see her professionally. She had been let down by him and by the NHS. The person he was referring to was Mr **R**'s boss. He said that **A** knew who this was although she did not know the facts. He said that if he was struck off and not on the UKCP register he could do what he liked and help whoever he liked. He said his biggest mistake was that he did not want to leave NHS practise. He said he had been in it for 24 years 'it's mine' and he was staying. He said if he could have taken a different view regarding the mud thrown at him. He said he was colluding with her to avoid problems not to do anything inappropriate. He agreed that on 28/2/2019 he was trying to reconnect with her. Regarding the 2/3/2019 exchange he said she was not distressed, she was histrionic. He described her as incredibly adept at getting by/through problems and she was a real survivor who had worked and had two children.

142. Regarding exchanges in April 2018 the Registrant said **A** had been offered mindfulness but she did not want this (2/4/2019). As to the comment about being caught in the middle (8/4/2019) he said that he had had to terminate another client-relationship due to the client's sexually inappropriate behaviour. He said that on 11/4/2019 it was clear she was angry at the NHS but it was directed toward him. He said that was human nature. When asked if their relationship was a friendship he said it was friendly. He said it was not emotionally beneficial from what she was saying but from what he was saying he was trying to be supportive but he was hamstrung. He said he did not see her at the NHS or privately although he could have done the latter.

143. Turning to Allegation 13 the Registrant said he did not offer A a job rather he assisted her and her partner by introducing them to a health unit in [REDACTED]. He said he had no idea if she was good or bad at her job.

Re-Examination

144. Mr Coppel first commented regarding pp172 and 220 in the bundle being WhatsApp messages from 2019 and attachments to a message from 2017 (Clint Eastwood and mantras). He said that the UKCP has made the assertion that they correlated but, despite his request they had provided no evidence for this or the assertion that the photographs were the attachments. He pointed to the photograph of the Registrant and his newborn child on p186 of the bundle (IMG-20171125-WA0009) and suggested this was one of the photographs in the message on p220 since the partial image number visible was "IMG-20171... 0009".

145. Mr Coppel then turned to what he called the Prezzo email at p204 and the Registrant's prior assertions regarding this. At p159 the minute of an interview the Registrant said maybe it was coincidence or maybe A misinterpreted. He said he stood by this assertion. He then went to pp149 and 152 and A's clarification that they met at the Prezzo in [location] Mr Coppel asked what was the case for the UKCP, was the meeting in [REDACTED] or [location]

146. Regarding the £250 provided to A and her comment at p168 (also referred to at p237) that she would pay this back. Mr Coppel asked whether the UKCP's case was that this was a loan or something else.

147. Mr Coppel next went to the emails at pp170-171, 14 January – 28 February and asked the Registrant what was going through his mind at the time. He said that at this time A had become really angry with him and he appreciated and accepted he had played a role in this but he said he did not think he had caused detriment to her. He said it was 'difficult to be supportive whilst maintaining the sense that I cannot be your therapist'. He said that 'your average Joe will get it but she was angry and fed up, justifiably'. He said he was the point of response. Mr R had not responded so A couldn't tell Mr R anything she'd said to him. He said his experience with the NHS was that if there is a problem they ignore it so as not to do anything wrong. The Registrant said 'I got it wrong because I got involved and have thought about it for six years'. He spoke about being told he was suspended and reacting by resigning but on return from a holiday he spoke to H.R and to Mr [REDACTED] [Registrant's solicitor] and changed his mind. He said he should have walked away from the NHS after the difficulty with the [REDACTED] gentleman but he suffered from a sense that it was 'my NHS and I wasn't going to be squeezed or pushed, I belonged there irrespective of the views of the current management'.

148. Mr Coppel next revisited the letter (p209). The Registrant said that he acted within his professional obligation even though A had ceased to be a client. He said he was doing exactly what he thought he should do as per Para 9.3 of the Code (p34) regarding a practitioner being suddenly unavailable. He said he realised the NHS would not like him doing what he thought he should. He said he had two meetings with Mr M. In the first he did not give a proper answer because he had not been provided with particulars. In the second he said he did not want to badmouth a colleague but A's welfare and the lack/inadequacy of treatment was more important.

149. In dealing with the message (15/04/2017) requesting a testimonial for his company at p213 when A was a client and his denial at p82 that there were text messages when A was a client the Registrant said he apologised that there had been such a communication. He said the statement at p82 had not been signed by him (p84). He agreed that at p161 he had said he did not recall his request but at p99 he says 'it seems I did' and at p241 some detail is recorded in the NHS report. The Registrant said that Mr M had signed off his findings before he had provided his response and it had never been explained why it had taken the NHS four months to disclose the documents.

150. Regarding seeing A at his [location] clinic, the Registrant said he did not see any clients there. He stopped seeing private clients and when some 'tried it on with him' he referred himself to the UKCP and undertook not to see any such clients. He said that his company EASE started as part of the NHS, but they then took it outside the NHS and provided services back to the NHS. This was massively beneficial with a 98% success rate if not very good financially. He said that 'we were seeking commissioning with the NHS to get work in different localities on a larger scale and this was where the testimonial thing came from.'

151. Mr Coppel next pointed out that a suggestion that the Registrant saw A at his clinic three times (record of interview p149) did not appear in the corrected record on p152. The Registrant said it was 'absolute nonsense' to suggest he saw her in this way. He also pointed to p122 of the NHS conclusions which makes no reference to this suggestion. He said that it was nonsense because he had not seen clients for years. He had had private clients but as EASE grew and he became a father he stopped this. He said, 'I did meet her and did see her at my office but I never had any talking therapy relationship with her after my suspension.'

152. Regarding the allegation of a job offer and his response to that (p164) he said he informed her of a job opportunity which is something he routinely did for people. It was not employment with him or his company. He said there were volunteering services that support/teach people in volunteering roles which helps them to manage their conditions and reintegrate them into the community rather than just hang around psychiatric services. He said as services changed with Care in the Community and MDT teams the role of the

psychological therapist changed such that he had to be aware what services were being provided so he could respond to problems. He said EASE was not an MDT member. Regarding the finding by the NHS at p131 where he was said to have offered her a place in the clinic where he worked he said he had tried to help her get a role in a private clinic in [REDACTED]. He did not work there. He said he had not discussed A's partner getting a job but she had said he wanted to leave the [REDACTED] ambulance service and the clinic (Sentinel Centre) was expanding and starting a private ambulance service. Since he regularly brought A to sessions he said he met A's partner. He said, 'the NHS considered this a serious breach but I didn't.' Mr Coppel pointed out that the NHS letter on p43 made no mention of A's partner. The Registrant said EASE was a standalone talk-therapy provider and did not provide support services. He said, 'I did not admit that I tried to get her to work in my private services.'

153. The Registrant then answered questions from the Panel. When asked how he evaluated the impact of his actions upon A he said that when she first attended she was referred by a GP but the GP retired and, when he was suspended A lost everyone she relied upon. He said he did not know the full depth of A's family and personal problems at first but had the sense she could not rely on people. As an example he said A had a good relationship with her partner but kept her own flat 'just in case'. She went back to work. They started talking about her anxiety and she subsequently disclosed horrific traumatic events. He said he had worked with people who had been abused as children albeit it was not a specialism. He said they might reach a time when they could address the trauma but for the moment they were trying to stabilise and contain things in her life. The relationship with her parents was difficult but her father agreed to get help which reduced some stress. He spoke of A's pride at having a baby and recounted her progressing to the point where she had 'disembodied' her trauma and could talk about it. He said it was cathartic rather than healing but it had been sufficiently beneficial that A could have a relationship and a child. He described A as committed to attending therapy and she was a survivor. She had not 'recovered'. He said she had been client for 2½ years which was a long time for the NHS and we were here because of what occurred regarding the [REDACTED] gentleman (the allegation that he discharged the client inappropriately) and his suspension meaning he could not see A.

154. When asked what his thinking was regarding A, the Registrant said - [REDACTED] he received an email from the NHS saying their 'strategy' regarding him was 'not working,' which enraged him. In addition, he had A trying to contact him at a time when he was told not to contact anyone or set foot on NHS premises. That was why he did not contact his manager.

155. Regarding supervision he said that he had seen ES [REDACTED] for many years and he was still in contact. He was a surrogate father figure but was less about clinical work than about projects. He said he was supposed to have clinical supervision from Mr R [REDACTED]

but that was all managerial. He said the reflection with **ES** was conversational rather than advisory but it included 'blind spot' reflection. He said in 2018 he had spent a lot of time thinking about all of this and he was not going to put his career ahead of his own values. He did not believe he was contravening the UKCP code. He said the NHS would not like it but he wasn't prepared to . . . contact was sporadic. He said his beliefs and values came first. He agreed 'we all have blind spots' but said he did not regret what he did and did not think he had done anything to **A**'s detriment. He agreed she was suffering but said he did not agree at all that he was the cause. He said if he had ignored her, her view of him would be the same as her view of Mr **R** and he would still be here in front of the UKCP. He said he did not wish to be here with his neck on the line.

156. The Registrant was reminded that earlier in the hearing he had said it was 'hellishly difficult' dealing with a situation where he was suspended but she needed contact. He said he recalled this. It was suggested that suspension would normally be understood as meaning one should not see clients. The Registrant said, 'we were left high and dry and it is difficult to turn the phone off. I am cognisant that the issue can be boiled down to length of time. He said he did not instigate this and it was hellishly difficult. He said that on reflection he could have simply told her he was not at the NHS and could not see her and spoke of a supervisor whose client had contacted the supervisor six months to the day after their professional relationship ended. He said that **A** was 'more worried than ill, she was both vulnerable and needed support, she was also resilient and a survivor.'

157. When asked who was responsible for ensuring **A** received therapy after his suspension the Registrant said he regarded her as a client of the NHS. He said in his own organisation if someone is on leave he makes sure the client has an alternative contact. He was asked what his view of 'professionalism' was and said it was behaving in a manner befitting of the type of profession one worked in. He said he believed he had done that even if he may not have done it very well. Regarding a person asking for help he said this was what occurred regarding the **█** gentleman. He agreed someone on a waiting list was entitled to help but if he provided care to everyone the NHS would never see people. It was very difficult.

158. The Registrant was asked if he thought **A** needed help when she contacted him. He outlined the NHS criteria for assessment and treatment but said the reality was different and that was why he stayed as long as he could. It was where he felt he belonged. He recognised the power imbalance in client/practitioner relationships and said it was greater when someone was in his care. Some patients would ask what to do like he was a guru. He did not ignore the imbalance but addressed it and tried to help clients rationalise their problems and address their concerns so they could return to the community.

159. Regarding his NHS contract he said this was largely obsolete. He said he was employed to do various functions one of which was taken away from him. He was supervising and assessing as a Band 8A employee but he was not a manager. He made suggestions to improve the service

160. Regarding the UKCP code he said the NHS did not have the same code as the UKCP. He agreed the UKCP code was applicable to him when he worked at the NHS but said the problem was that what they accused him of doing. He said he asked them what the problem was because he did not see where he had breached the Code.

Submissions

Mr Shephard on behalf of the UKCP

161. Mr Shephard provided written submission to the Panel. The Panel confirmed that these had been received and read. Mr Shephard outlined the burden and standard of proof and said that the UKCP relied on all the documents and statements including the statements made by the Registrant. He declined to withdraw reliance upon the photographs (Clint Eastwood etc) asserting that the numbers relied on by Mr Coppel were only partial. The registrant had the opportunity to present the email and clear this up but he had not. He said that before the Registrant had given evidence it was asserted on his behalf by Mr Coppel that the messages were sent and what was said. This was the position on 5 July and was the position on submission which were presumably advanced on instruction. He said the evidence regarding the £250 and the meeting at Prezzo had been explored. He said that even if the UKCP was wrong regarding the status of **A** being a client not an ex-client all of the Registrant's conduct was met by breaches of the Code including Code 1.3. In conclusion he said the only difference between the parties was the dispute regarding the email attachments and the rationale for the actions that took place.

Mr Coppel on behalf of the Registrant

162. Mr Coppel commenced by saying that the Panel was concerned with the Registrant's continued membership of the UKCP and it would impact upon his employment and ability to do his job. He said continued registration was to be resolved by measuring the Registrant against the Code – this was 'the only yardstick, there is nothing else'. He said the Code marks out what is relevant and the facts are relevant depending on what the Code demands or expects. He said that the case was founded on what the Registrant's former employer found regarding the Registrant and, whilst the UKCP could present a case in this way it was perilous to do so because whether an employee is disciplined or dismissed falls to be determined on the requirements of his contract of employment and his employer's code. This may coincide

with a regulator's code or it may have little to do with it. It cannot be that just because one loses a job that regulatory proceedings follow.

163. He continued by observing that it is perilous when a regulator relies on the findings of an employer to base a breach of a regulatory code because the regulator gambles everything on the efficacy of the employer's process rather than relying on it to support what the regulator brings to the proceedings. Where a regulator brings all the findings in one basket any shortcomings in the employer's findings necessarily damages the entire findings and what does this do for this panel? He said the case was a paradigm in the danger of putting all their trust in the NHS Trust's employment process. The UKCP have offered no evidence of their own or sought to vouchsafe the NHS findings. Mr Coppel said this was a surprising gamble because the primary concern for the NHS Trust was maintaining contact with a service user of the NHS Trust and that was not the touchstone under the UKCP's Code. He said there was a mismatch and that was apparent from the terms of the investigation report (p112). The proper and safe boundaries for the NHS Trust were not the same as those required by the Code. The finding of the report on p138 was a breach of trust boundaries not UKCP boundaries.

164. Mr Coppel invited the Panel to look at p137-138 and the Trust disciplinary rules which graded breaches in seriousness and to Paragraph 5.5 (inappropriate behaviour) the failure to maintain an appropriate relationship with a patient or service user which was serious. He said a service user was not the same as a patient. The NHS drew no distinction between them. However, the UKCP Code makes no reference to service user it speaks of the client and at only three points, Codes 1.3, 1.6 and 3.4, does it speak of former clients. Code 9.3 contemplates contact with a former client and when support is needed if the relationship is suddenly terminated. Mr Coppel said it was a surprise that the UKCP had not said what contact between the Registrant and his former client was unacceptable other than as set out in the Code. He said the UKCP had been 'hazy' and sought to hide behind the conclusions of the NHS Trust. He said the mismatch between the NHS Trust policies and the UKCP policies did not give the UKCP any cover. Rather than clearing the haze he said the line had been drawn in reverse around what the Registrant had done.

165. Mr Coppel referred to the evidence matrix provided by Mr Shephard and said that as far as Charge 1 was concerned the case was 'we have the findings of the NHS Trust therefore find Charge 1 proved'. He said that position could not be sustained. He said Charge 2 heightened the lack in the UKCP's case. He said of the first two allegations that as far as the NHS Trust were concerned it was the giving of the telephone number and email to the service user that was the breach. It was not disputed by the Registrant but this was a binary matter for the Trust. You cannot provide such details and the Registrant did. The Code was not the same, it was more nuanced.

166. Mr Coppel suggested that A was 'particularly and peculiarly vulnerable', she was a paradox who had been able to get through a number of events including in her childhood but her vulnerability showed in the communications. A lengthy therapeutic relationship had been terminated at a time when the need for such relationship was obvious and continuing. He said there were many messages including some that were pleading and pained. These were started by A with gaps between them. He said that the Panel's evaluation was not the same as the binary NHS one. Allegation 3 he said was that the Registrant had shared information. The NHS approach was you did this so that's the end of it but, that is not the case for the Code or the Panel. It is more nuanced and one must look at the context of what was going in. Her distressed texts were often responded to by the Registrant in measured tones and it cannot be said that no responsible registrant would not have responded as he did.
167. Turning to Allegation 4, the meeting in Prezzo he said the NHS conclusion at p45 was that there was clear evidence they met. A was initially adamant the meeting was in [REDACTED] but then she resiled from that and said it was in [location] Mr Coppel said it was not safe to rely on the NHS findings because although A's change brought her in accord with what the Registrant said it could not be reconciled with the documents. Regarding the allegation of meeting at the [location] clinic, Mr M [REDACTED] did not find this occurred and there was nothing to say it did but remarkably at p43 the NHS finding was that there was clear evidence to support this. The contradictions in A's accounts was manifest to the NHS panel at pp149, 152, 154 and 173 and, without a reconciliation the conclusion was unsafe.
168. When dealing with allegation 5, the letter, Mr Coppel said that the letter was not in dispute. The UKCP had not disputed that A wrote it and had provided nothing to counter what the Registrant had said namely that he helped a dyslexic person to get the thoughts in her head onto paper. He said there was not a jot of evidence that it went further than that.
169. Mr Coppel submitted that it was not safe to rely upon the finding regarding allegation 6 because the evidence before the NHS was that this was a loan to have driving lessons. How the NHS came to their conclusion regarding this was not clear but it was not safe to rely on it because they had not acknowledged what it was for or the fact it was a loan. The Registrant had explained in and A supported his explanation.
170. When looking at allegations 9 and 10 (discussing private matters) Mr Coppel said these were the same as allegation 3. Mr Coppel said that these were all things said between the Registrant and A and many of them were attempts by him to make A feel less bad about herself. He was saying what he was facing so she did not feel alone. As to allegation 11 (the job offer) he said this was another unsafe conclusion the Panel could not rely upon. Central to the wrongs considered by the NHS, was that the Registrant offered a job to A where he worked (p160) whereas as the Registrant explained it was nothing to do with his

business (p164) and there was no evidence from **A** about this. It was an unsafe conclusion not to be relied upon.

171. Turning to allegation 12 (not to tell anyone) Mr Coppel said this too could not be relied upon let alone ported over to the Code. At p46 the NHS say there was collusion in deception but there is nothing in the rules to say this was a breach whether serious or not. The only evidence for this remained weak and Mr Shephard's evidence did not do it. As to allegation 13 (failure to disclose UKCP investigation to NHS) Mr Coppel said that a failure implied a duty but the NHS rules at pp336 and 339 set out what was disclosable and there was nothing about disclosing UKCP investigations.

172. Regarding allegation 14 (maintaining contact) Mr Coppel said the fact of contact was not in dispute and that there was no prescription against keeping in contact other than in the three paragraphs of the UKCP code previously mentioned. He said the issue was whether the contact in this case was such that no psychotherapist in the Registrant's position consider it was not in [accord with] the Code of conduct. The question for the Panel was did the Registrant transgress the bounds. As for allegation 15 (support for a private project) (pp214-218) there was an absolute prescription by the employer but there was no such prescription by the UKCP.

173. Mr Coppel said he would close with some general observations. He said it was correct that adverse inferences may be drawn and that where a party (the UKCP) had persisted in presenting a demonstrably incorrect case the Panel could and should infer that their assertions could not safely be relied upon. That appeared just as much in these proceedings as in a court. He said that pp220-223 (Clint Eastwood etc) was 'majored on' earlier in the hearing and today and he had specifically drawn the UKCP's attention to this being unsafe. The falsity of the UKCP stance was staring at them on pp190-191. He said that whilst mistakes can be made they can be acknowledged and retracted and the UKCP stance did no credit to them. He said that the UKCP closing submission were a desperate bid to save the case and that the numbers made this clear (pp220, 186, 187). The UKCP had put forward no evidence to support their assertion it was however consistent with the UKCP's 'desire to pot the Registrant' however it was not their job to prove things at all cost. He asked 'to what extent can the Panel rely on the UKCP when a demonstrable truth is denied because it does not fit in with their fixed idea. The UKCP, he said, had not come anywhere near proving facts capable of sustaining misconduct.

Determination of Facts:

174. The Panel considered all the documentary evidence before it, the oral evidence from the Registrant, the submissions from Mr Shephard on behalf of UKCP and those from Mr Coppel on behalf of the Registrant. The Panel noted that it was not bound only to consider those breaches of the Code as alleged by the UKCP but should consider the entirety of the Code.
175. The Panel accepted the advice of the Legal Assessor which included advice upon the burden and standard of proof, focusing on the heads of charge, inferences and speculation, assessing witnesses, relying on the findings of another body, breaches of the Code and the terms 'incongruent' and 'failure/failed'.
176. On balance, having fully considered the above, the Panel made the following findings.
177. The issue of whether A remained a client of the Registrant after he was suspended, as asserted by Mr Shephard on behalf of the UKCP, was a matter argued at some length by both parties. In short Mr Coppel submitted that she was not a client and much of the UKCP case was misguided. Mr Shephard submitted that A remained a client but even if this was not the case, the Registrant's alleged actions were caught under the Code. The Panel considered that it should determine this issue first since it may inform much of its deliberation.
178. The Panel was of the view that once the Registrant was suspended, those persons to whom he was providing services such as A were no longer his clients, but they remained service users of the Trust. The fact that the Registrant was suspended terminated his responsibility to A as an employee of the Trust. However, the fact that A was no longer his client did not absolve the Registrant from all professional responsibility as he himself articulated. The Panel found telling his comment that "I got it wrong because I got involved". The Panel had no doubt that the Registrant should have stepped away from A and their relationship. His suspension meant that he should no longer have any contact with her as a professional and as an experienced employee of the Trust, the Panel found that he would have been aware of this.
179. However, rather than placing a professional boundary between himself and A as he should have done, the Registrant remained engaged with A and at times acted as if he were her practitioner and she his client. Her emails disclosed that she appeared to think of him as her practitioner and his responses, such as those stating he was there for her or would be there for her, did nothing to dispel her clear belief and/or confusion as to his position. The Registrant stated that he felt he had a professional responsibility regarding the letter he produced on her behalf and he exercised his professional judgement. Her attendance at his

place of work was an example of such conduct by the Registrant. The Panel found the Registrant's description of A attending his work premises as "social meetings" to be unconvincing. The Panel concluded that she attended those premises seeking professional support. Rather than draw a firm line under their relationship, the Registrant continued his engagement with her as if he was in the position of therapist. He did so in the belief that he was the only person able to provide the support she needed. His belief in himself being the only person capable of supporting A was challenged by the abrupt end, or what should have been the end, of their professional relationship. Rather than accept and manage this ending, the Registrant acted on his own self-belief and maintained inappropriate contact with her.

180. At times the Registrant acted out-with the actions of a professional and behaved as a friend. Sending personal photographs and communications, lending money to A, meeting A at a restaurant. These are not the actions expected of a professional as regards a client or recent ex-client, particularly ones as vulnerable as A. Whilst the Panel found the Registrant to be credible in some of his evidence, such as when he said from his perspective A was not his client, the Panel found him to be not credible and evasive when describing what the relationship was and what their actions were. An example is the debate over whether they met at Prezzo in [location] or [redacted]. The location was not the important fact. What was important was that they met at all. The Registrant's story changed from having no recollection in the NHS proceedings, which he accepted wasn't true but was a sort of 'holding statement' that he deployed, to the meeting being a coincidence, to it being a meeting in which she jumped in a taxi to join him where he was having lunch. The Panel found his explanations to be not credible. On reading the text, it indicates that this was an arranged meeting. Had he been at lunch with colleagues as he said, the Panel considered that he would have told her not to come to the restaurant but to meet elsewhere. The Panel found his evidence to be misleading and less than frank.

181. A further example of the Registrant's unreliability in some areas was his description of the letter which he denied writing. His initial stance was that he merely checked her letter for typos (typographical errors). He then conceded that he typed the letter but it was what she had dictated. Subsequently, he conceded that he did far more than just put her thoughts down. The email trail, the content of the letter, and his comment that he would be vindicated all indicate he was a contributing author of the letter. It is a letter critical of A's new practitioner and critical of the Trust. The Panel found the Registrant's evidence to be evasive and unreliable when describing this letter. The Panel concluded that he contributed significantly to the writing and production of the letter.

182. The Panel found that the Registrant's view of himself as being the only person who could help A meant that he disregarded the rules and the processes that should have protected A and the Registrant.

Allegation 1:

- (a) On 12 August 2021 whilst working as a Senior Psychotherapist at Barnet, Enfield and Haringey Mental Health Trust were dismissed for gross misconduct.

Not admitted.

Found Proved

The Panel noted that at p43 of C1, there was a letter dated 21 August 2021 stating that the Registrant was dismissed for reasons of gross misconduct.

Despite not admitting Allegation 1(a), it was the Registrant's own case as argued by Mr Coppel and as stated by the Registrant that he had been dismissed by the above-mentioned Trust. The Panel therefore determined that he had been dismissed by the Trust for gross misconduct.

- (b) The decision and findings which led to your dismissal as set out at Schedule 1 is incongruent with what is expected of a UKCP registrant and related to your practice as a psychotherapist.

Not admitted.

Found Proved

The Panel considered that the term 'incongruent' means 'not in keeping with'. The Panel was of the view that the fact the Registrant had been dismissed for reasons of gross misconduct and that the reasons for the finding of gross misconduct related to his continued inappropriate relationship with his ex-client who remained a service user of the NHS Trust was not in keeping with what may reasonably be expected of a registrant.

The public do not expect registrants to be dismissed in this way and/or for the reasons found proved by the NHS disciplinary process, and as such there was an incongruence. Whether such incongruence could or would found a case in misconduct and or current impairment were separate issues yet to be argued and considered.

Allegation 2:

The behaviour set out at 1 above is in breach of UKCP's Ethical Principles and Code of Professional Conduct (2009) (2009 Code) and UKCP Code of Ethics and Professional Practice (2019) (Code 2019), in particular:

- a. You failed to take responsibility for respecting the service user best interests when providing therapy thereby breaching clause 1.1 of the 2009 Code;

Denied.

Found proved.

The Panel found that the Registrant asked **A** to provide a false testimony for his business. He did so before he was suspended and when she was still his client. Asking **A** to provide a false testimony was in his interests not in hers.

The Panel found the Registrant's evidence to be somewhat evasive when he was asked whether he would benefit. He denied he would benefit or only conceded it as a theoretical possibility. The Panel was of the view that her testimony was designed to enhance the reputation of his company. The Registrant was the founder and principal

shareholder of the company. He conceded that he was entitled to a percentage of profits and that the company was seeking to bid for work and expand. Whilst he may not immediately profit, that prospect was more than a theoretical one. In addition, there was the potential for reputational enhancement. All this was in his interests, not hers.

- b. You failed to treat the service user with respect thereby breaching clause 1.2 of the 2009 Code;

Denied.

Found proved.

The Panel considered that “respect” meant showing consideration for. It was clear to the Panel that the Registrant did not maintain appropriate boundaries in their relationship such that it was unclear to **A** whether the Registrant was a professional or a friend. The communication between them gives a picture of her vulnerability, confusion and distress.

This was a situation caused or contributed to by the Registrant communicating and meeting with **A** in the casual and at times personal manner evident in the emails and texts. This did not respect her or her best interests. Likewise asking **A** to provide a false testimony did not respect her or her interests. It was done for his benefit. The Panel concluded that in such actions the Registrant was considering himself and his needs rather than respecting her needs.

- c. You exploited your relationship with the service user thereby breaching clause 1.3 of the 2009 Code;

Denied

Found Proved

The Panel found this proved for the reasons set out in “a” and “b” above.

- d. You failed to carefully consider the possible implications of entering into a dual or multiple relationship with the service user thereby breaching clause 1.5 of the 2009 Code;

Denied

Found not proved

Whilst it may be argued that there were elements of duality in their relationship before he was suspended, the main evidence and the thrust of the case as put by the UKCP was that the relationship was a dual relationship after the Registrant was suspended because she remained his client and the relationship was clearly affected by their social contact.

Whilst it may be that the Registrant failed to properly assess his relationship with **A** after he was suspended (for which see “e” below), she was no longer his client. As such Clause 1.5 does not apply.

- e. You failed to take into account the length of therapy and time elapsed before entering into a personal or business relationship with the service user, thereby breaching clause 1.6 of the 2009 Code;

Denied

Found Proved

The Panel considered that Clause 1.6 of the Code required the Registrant to consider the length of therapy, the time since therapy ended and to pay particular attention to exercise reasonable care before entering into a personal relationship with a former client.

The Registrant stated that **A** was extremely vulnerable. He also said despite this she was a survivor. Whilst these two statements are potentially contradictory, he made it plain that her case was a traumatic and difficult one, and she had been in therapy with him for a long period of time. He said she was not vulnerable whilst she was his client. The Panel concluded that the Registrant was of the opinion that only he was able to support **A**. The Panel concluded that the Registrant failed to consider the length of their professional relationship and the complexity of her case, but simply continued with their personal relationship, during which it was unclear to **A** whether the Registrant was a professional or a friend. He did so in the belief that only he could help her.

The communications from **A** demonstrated her confusion and distress regarding her relationship with the Registrant. She clearly considered herself to be his client and that he had let her down. Rather than explain that this was not the case and why, the Registrant said he was or wished he could be there for her. One example of which is the letter referred to above. The Panel found that he repeatedly was there for her, in the sense that they exchanged personal communications, met both at his professional premises and socially. He provided support and advice to her. He significantly contributed to the letter which criticised the Trust and her new therapist. In evidence he said, "I got it wrong because I got involved". He also said in cross examination that Mr Shephard "failed to comprehend the complexity of the therapeutic relationship" implying that even after his suspension he regarded their relationship as being therapeutic. The Panel concluded that the boundary between the Registrant's professional relationship and his personal relationship with **A** was blurred.

In addition the Registrant had little or no clinical supervision to challenge his own view that only he could help **A**. He described any supervision within the Trust as managerial. He made it plain he did not get on with or respect Mr **R** and that **ES** was more a father figure than a supervisor to challenge him. Had the Registrant maintained proper clinical supervision, he may have recognised that the personal relationship he had with **A** was detrimental to her.

- f. You failed to respect the service user's autonomy, thereby breaching clause 1.7 of the 2009 Code;

Denied

Found no case to answer

- g. You failed to respect, protect and preserve the confidentiality of the other people you were seeing for therapy when sharing private details with the service user thereby breaching clause 3.1 of the 2009 Code;

Denied

Found proved

The Panel considered the information provided by, and the behaviour of clients, in therapeutic sessions, be it inhibited or disinhibited, should remain confidential unless there was a legal or professional obligation to disclose such as safeguarding. A described conversations regarding other clients and how they behaved with the Registrant. One such was a client who revealed she had no clothing on under her coat. The Registrant described such an event.

The Panel was of the view that whilst there may be occasions when it is acceptable for a registrant to describe how a problem or situation confronting one client was approached, what process or methodology was used, etc. – that was not the case here. Rather the disclosure of information from one or more sessions was more in the form of chat and gossip with A. It was not provided to assist in the treatment of A and was contrary to the interests and confidentiality of the other clients.

- h. You failed to protect sensitive and personally identifiable information obtained from the course of your work as a psychotherapist thereby breaching clause 3.2 of the 2009 Code;

Denied

Found no case to answer

- i. You failed to acknowledge that your professional and personal conduct may have both positive and negative effects on the service user thereby breaching clause 4.1 of the 2009 Code;

Denied

Found proved

Code 4.1 refers to a “continuing process”, and to “any client”. It encompasses personal conduct as well as professional conduct. The Panel was of the view that the language of this part of the Code is such as to suggest it applies to both current and former clients. Were it to be read in such a narrow way as being limited to current clients, it would not protect the public. It would emasculate the continuing process and would render the term “any client” meaningless. It would enable a registrant to disregard the impact of their conduct upon former clients which, even the Registrant did not accept, since he asserted that he had a continuing duty toward A in terms or referral to another therapist.

The Registrant sought a false testimony from A. He sought to justify this and to belittle the seriousness of such conduct. He did not acknowledge the potential negative impact that may have upon A. Likewise he rejected the proposition that

providing A with a letter that was highly critical of the Trust and A's new therapist was detrimental to her. Instead he sought to justify it as being in her interests rather than his own. The Registrant significantly contributed to the letter as he acknowledged. It was written at least partly in his interests, indeed he describes himself as being potentially 'vindicated'. There appears to be no consideration by the Registrant that his actions were or could be detrimental to A and any relationship that she may have or may need to build with others.

In addition, as stated in "e" above, the Registrant had little or no clinical supervision to challenge his own view that only he could help A. He described any supervision within the Trust as managerial. He made it plain he did not get on with or respect Mr R and that ES was more a father figure than a supervisor to challenge him. Had the Registrant maintained proper clinical supervision, he may have recognised that the personal relationship he had with A was detrimental to her. One only has to read the texts and messages in which her distress and confusion is evident. Rather than signpost A to alternative support and/or explain how to engage with others, the Registrant repeatedly stated he would be or wished he was there for her. He maintained her in a state of limbo.

The Panel found the Registrant's insistence that he was disallowed from speaking to anyone about A to be unrealistic. He could have contacted Trust managers (for example through a nominated contact after suspension), the UKCP, her MP, her GP. He could have written to A in firm clear language setting out that he could not assist her and why, and what she needed to do. He did none of these things, rather he maintained their relationship and her confusion.

- j. You failed to undertake, in a continuing process to critically examine the effect of the conduct at (i) above may have had on the service user and place a priority on preserving the service user's psychotherapeutic best interests, thereby breaching clause 4.1 of the 2009 Code;

Denied

Found proved

The Panel adopts the reasoning for 'i' above, in particular the distress and confusion caused to A and the lack of appropriate clinical supervision to challenge his apparent blind spots and belief that he was the only person who could help A.

- k. You failed to consider how best to refer the service user to another psychotherapist or professional when it became clear this would be in her best interests, thereby breaching clause 5.7 of the 2009 Code;

Denied

Found not proved

The Panel has already concluded that following the Registrant's suspension, A was not his client. It was not his duty to refer A to another, it was the NHS Trust's duty since she remained a service user of the Trust. Without such a duty, the Registrant could not be said to have failed.

- l. You failed to report any potential breaches of this Ethical Principles and Code of Professional Conduct by yourself to UKCP, thereby breaching clause 10 of the 2009 Code;

Denied

Found not proved

The Panel noted that the Registrant did self-refer regarding the disciplinary proceedings that he faced. He may have commented upon the Trust's view of events stating that this was not his view, but he makes clear that a number of the allegations are "tantamount to potential breaches of conduct." He may have questioned their view, as he was entitled to do, but the Panel finds that he did report the potential breaches.

- m. You failed to accept responsibility to act against colluding with practice harmful to clients, thereby breaching clause 13.2 of the 2009 Code;

Denied

Found not proved.

Whilst this part of the UKCP case was mainly concerned with the false testimony and the letter referred to above, the production of these could not really be described as a practice. Whilst it was inappropriate for the Registrant to ask A to provide a false testimony for his company, it is stretching the language to suggest that this amounts to a 'practice'. Rather it was an individual act. The same may be said regarding the letter.

The Panel was of the view that rather than being harmful practises, the above were examples of the Registrant putting his needs before A's as part of the personal relationship he maintained with her. As such they are relevant to 'e' above.

- n. You failed to Act in a way which upholds the profession's reputation and promotes public confidence in the profession and its members, including outside of your professional life as a UKCP practitioner, thereby breach clause 32 of the 2019 Code.

Denied

Found not proved

The 2019 Code came into force on 1 October 2019. All the facts complained of occurred prior to this. In legal argument both Mr Coppel KC and Mr Shephard asserted that the 2009 Code applied to the facts in this case.

183. In making the above findings the Panel took account of all the evidence, the submissions made by Mr Shephard, Mr Coppel and the advice of the Legal Assessor.

184. In total the Panel found **7 breaches** of UKCP's Ethical Principles and Code of Professional Conduct proved as set out above. The Panel noted that there is a degree of overlap between several of the Codes and breaches.

Determination on Misconduct:

185. This determination should be read in conjunction with the Panel's previous determinations.
186. In accordance with rule 7.23 of UKCP's Complaints and Conduct Process, the Panel went on to consider the question of misconduct. In addressing this question, the Panel took into account all the information before it.
187. The Panel received written submissions from Mr Shephard and Mr Coppel. It then heard further oral submissions. Mr Stevens, Counsel was now instructed in place of Mr Shephard.
188. In his written submissions Mr Shephard referred to the Code and to the familiar cases of *Roylance v GMC*[1999] 1 A.C. 311, *Calhaem v GMC* [2007] EWHC 2606 (Admin) [39] and *Nandi v GMC* [2004] EWHC (Admin) [31]. He submitted that the Panel had identified seven breaches of the Code and that these breaches were serious. He referred particularly to findings that the Registrant exploited his relationship with A, he failed to respect, protect and preserve the confidentiality of other service users and he failed to acknowledge that his professional and personal conduct may have both positive and negative effects on A.
189. Mr Stevens adopted and amplified the above written submissions. He referred to the above-mentioned cases and submitted that those particulars found proved comfortably amounted to misconduct. There were a number of breaches of the Code which were both individually and collectively serious. He submitted the Registrant had crossed professional boundaries in a significant way for a significant period of time causing distress and confusion to A. He submitted the continued relationship between the Registrant and the A was not in her best interests and he did nothing to dispel A's belief and/or confusion about that relationship. The Registrant, over a prolonged period, engaged with A in his belief that only he could help her. He conducted himself and communicated with her in a way that was not expected of a professional.
190. Mr Stevens then addressed the specific breaches of the Code found proved and said that they were serious. Regarding Clauses 1.1, 1.2 and 1.3 of the Code the factual findings included failing to take responsibility for A's best interests and failing to respect her when looking to his interests in seeking a false reference. He said there was clear exploitation of A in this respect. Regarding Clause 1.6 this was a failure to take account of the length of their professional relationship and the time that had elapsed before entering a personal relationship which clearly impacted A. Turning to Clause 3.1, Mr Stevens said the breach found proved was again serious. Patients and the public would expect information disclosed

in therapy to be treated as confidential and not disclosed in chat or gossip. Finally, the Breach of Clause 4.1 and the Registrant's failure to recognise the impact of his actions on **A** was also serious. Mr Stevens concluded that the findings were entirely consistent with a finding of misconduct and comfortably so.

191. In his written submissions Mr Coppel said the Registrant faced two charges which contained numerous allegations of fact. He said that the Panel should only act upon those facts found proved, the breaches overlapped, the circumstances of the case (the Registrant's dismissal from the NHS hospital) were exceptional and placed him in an unusual and stressful position and, the breaches of the Code arose from a 'one-off error of judgement' that did not have a detrimental effect on **A**. Mr Coppel submitted that since the first charge did not identify any breaches of the Code so it could not be the basis for misconduct. He said that the second charge was merely 'repurposing' the facts of the first charge. The first charge revealed no breaches of the UKCP code, so the Registrant did not know what he faced but the UKCP were indifferent to the rules of natural justice. He said there was 'simply no basis' for finding misconduct based on the first charge.

192. As to the second charge Mr Coppel said that as regards charge 2(a) the factual finding of the Panel bore no relationship to the UKCP's submissions and as such it was 'impermissible' to find this supported the second charge. He said that clause 1.2 of the 2009 Code only referred to current clients not past clients so that charge 2(b) also did not support charge 2. He said that since charge 2(c) relied on the reasons given for charges 2(a) and (b) it too fell away. Mr Coppel submitted that charge 2(e) and the reasons given by the Panel spoke to an error of judgment that was unlikely to be repeated. He said that charge 2(g) scarcely breached confidentiality and did not support a finding of misconduct. He submitted that the findings in relation to charge 2(i) revealed an error of law regarding the meaning of the Code but, if that was rejected, the incident was an error of judgement that could be dealt with by training. Finally, he submitted that charge 2(j) merely recast allegation 2(i).

193. In summary Mr Coppel submitted that at worst there were errors of judgment made in difficult circumstances and which were unlikely to be repeated. He said such errors did not stray outside the range of 'evaluative latitude' that professionals enjoy and as such there was no misconduct. Finally, he said that if there was misconduct it did not merit sanction or at worst it merited training.

194. Mr Coppel also adopted and amplified his submission orally. He said that misconduct required a finding of serious error, it did not include trivial or ephemeral misjudgements. He said that misconduct was often conducted in secret since it would attract censure. Mr Coppel submitted that the background of the sudden termination of the Registrant's employment and his position in treating **A** was an important backdrop to what occurred. It was a situation

neither the Registrant nor A wanted or expected, and it put him in a difficult position. He also reminded the Panel that the allegations and the breaches overlapped so the Panel should step back from the individual events and survey the whole canvas which, he said, revealed a picture of a Registrant misjudging matters as opposed to acting in a malign fashion.

195. Mr Coppel then addressed the individual findings and said that Allegation 2(a) should be put aside for the reasons he had provided in writing. He said that Allegation 2(b) did not amount to misconduct because the clause of the Code found breached did not apply to ex-clients such as A. Regarding Allegation 2(e) Mr Coppel said this was occasioned by a misplaced but genuine belief on the part of the Registrant that only he could help her. His continued support of A was done with the best of intentions. His lack of supervision meant that his error of judgment went unchallenged. He said that it was unlikely to be repeated due to 'life being a teacher' and to the singular background events. Dealing with Allegations 2(i) and (j) Mr Coppel again said these did not amount to misconduct because the particular clauses of the Code did not cover ex-clients but, even if they did, the Registrant was guilty only of an error of judgement and not misconduct.

196. The Panel accepted the advice of the Legal Assessor as to the approach it should adopt in considering the question of misconduct. The Panel recognised that the question of misconduct is a matter of independent judgement and is not a matter of proof for the parties.

197. In addressing whether the facts proved amounted to misconduct, the Panel had regard to the words of Lord Clyde in the case of *Roylance v. General Medical Council (above)*. He stated:

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

198. The Panel had regard to the judgement of Collins J in the case of *Nandi v General Medical Council (above)* in which he said: *"The adjective "Serious" must be given its proper weight, and in other contexts, there has been reference to conduct which would be regarded as deplorable by fellow practitioners. It is, of course, possible for negligent conduct to amount to serious professional misconduct but the negligence must be to a high degree."*

199. The Panel acknowledged that the decision to be made was one for its judgement based upon what the public and professionals expected of the Registrant. In this respect the Code was a useful guide and the Panel had determined that there were several breaches. These breaches were not the acts of an inexperienced and unwise junior practitioner but had been occasioned by an experienced psychotherapist and had occurred over a considerable

period. Whilst there were specific incidents such as the false reference or the letter of complaint, they occurred within the context of the improper continuation of the relationship between the Registrant and A.

200. Whilst the Panel accepted that the Registrant being dismissed was the unwanted catalyst of events, his decision to carry on supporting A as he now accepts he did, was not just a trivial or ephemeral error of judgement. It was a serious error of judgement with anti-therapeutic consequences of distress and confusion for A clearly evident in her communications. The Registrant maintained his position in the erroneous belief that only he could support and protect A. To act as he did over a period of time and with the evident consequence of harm to A was serious. Whilst the Panel accepted that this was not 'malign' conduct as might be hidden from view as Mr Coppel described, it was conduct indicative of the Registrant's hubris, lack of self-awareness and lack of awareness of the consequences of his actions. The Panel was of the view that the Registrant was blind to his own self-importance and, as Mr Coppel conceded, had he maintained appropriate supervision this might have challenged him in his actions.

201. Having said that the allegations covered a course of conduct, the Panel also found that there were specific instances of serious wrongdoing. This included asking A for a false reference with the potential to financially benefit the Registrant. This was at a time when A was a current client of the Registrant. It was serious misconduct and exploitative of A. In addition, the Registrant made a significant contribution to a letter that criticised the NHS Trust that had dismissed him and criticised A's new therapist. It was almost entirely self-serving for the Registrant justifying his position. It was not in A's interests. Furthermore, the Registrant disclosed information from at least one therapeutic session involving another client. Confidentiality is fundamental to the trust to be placed in professionals and breaching confidentiality in a gossipy way as the Registrant did was a serious failure.

202. In all the above matters the Panel concluded that the Registrant failed to assess the negative impact his actions were having on A which were evident as set out above. Had the Registrant taken the time to step back from events or to properly undertake supervision to challenge his views and actions, it may be that the Registrant would have seen how serious his actions were. As it is he did not, rather he concentrated on his own self-belief and his own interests to the detriment of A.

203. For the reasons set out above the Panel finds serious misconduct on the part of the Registrant.

Determination on Current Impairment

204. Mr Coppel conceded that on the basis of Paragraphs 200 – 202 the Registrant was currently impaired and that therefore the hearing should go on to make submissions on sanction.
205. Mr Stevens said that it would be an inappropriate procedural route to bypass the important consideration of Impairment.
206. The Panel sought advice on the approach that it should take and it was reminded that Current Impairment was a matter for the Panel’s professional judgment. It could take account of the concession but it remained the Panel’s decision.
207. Mr Stevens submitted that the Panel must determine the issue of Current Impairment by considering its findings to date regarding the Registrant’s past conduct and looking forward. He said there were personal and public components to be looked at and the risk of repetition. He referred to the familiar cases of *Meadow V GMC [2006] EWCA 1390* and *CHRE v Grant [2011] EWHC 927* and the wider public interest and overarching objective of public protection as well as declaring and upholding standards. He reminded the Panel of the comments in *Cohen v GMC [2008] EWHC 581* and to consider whether the misconduct was capable of remedy, had it been remedied and the risk of repetition. He submitted that the Registrant demonstrated a marked lack of insight and that it could not be said there was a low risk of repetition. He said there were repeated breaches of professional boundaries, and these rang alarm bells regarding repetition. Mr Stevens said that the breaches and the exploitation of the relationship was not a momentary lapse rather it was a course of conduct by an experienced practitioner who had ample opportunity to withdraw. He said that the Registrant’s response to the allegations revealed a serious attitudinal failing and an entrenched view of his own conduct which he failed to recognise as wrong.
208. Mr Stevens observed that the Registrant still did not recognise the seriousness of his wrongdoing. He said that a denial of wrongdoing was not an aggravating feature of the case (*Sawati v GMC [2022] EWHC 283*) but the Registrant’s continued insistence that his was a minor error and there were no breaches of the Code suggested he had not grappled with why he had acted in error and of the consequences to **A**. He said there was no evidence of change, rather the Registrant had criticised those who scrutinised his wrongdoing and, when it came to matters such as the false testimony for the company, he belittled the seriousness of this, rejected the suggestion of detriment to **A** and sought to justify his actions as being in her interests not his. Mr Stevens continued that the assessment of the Registrant’s evidence included finding that he was not credible, evasive, misleading, and less than frank. His actions were born of hubris and failed to protect **A** or himself. He said that there was a risk of repetition unless and until the Registrant acknowledged his wrongdoing, reflected on it, and corrected it. To date there was no evidence of this.

209. Mr Stevens invited the Panel to consider the Registrant's previous history and said that whilst the facts of the 2019 matter were different, the theme was similar namely breaching professional boundaries and Clauses 1.1 and 4.1 of the Code over a period of time. This prior matter of breaching boundaries supported the submission that there was a real and evident risk of repetition. Mr Stevens said that the above submission supported a finding of current impairment on public interest grounds in order to maintain public confidence. It was important in this respect to note that there were serious breaches of professional boundaries, confidentiality, and financial exploitation all alongside exploitative conduct in the authorship of the letter which was to the Registrant's benefit not A's.

210. Mr Stevens concluded by looking at the four familiar questions from *CHRE v Grant (above)* and said that at least questions 1, 2 and 3 were to be answered in the affirmative. The Registrant had (1) caused significant psychological harm to A, (2) brought the profession into disrepute by serious breaches including confidentiality and exploitation that eroded public confidence, aggravated by the history and (3) through his conduct he had breached fundamental tenets of the profession. Finally, he said the conduct was serious and a long course of conduct and sufficient to make a finding on grounds of public interest.

211. Mr Coppel responded that it was 'quite wrong and unprincipled' to make such wide-ranging submissions as above. He said impairment was binary – either misconduct meant that fitness to practise was impaired, or it was not. There was, he said, no basis for varying degrees [of unfitness] or for the declarations sought by the UKCP. He repeated that the Registrant accepted without qualification that his fitness to practise was impaired by reasons of the findings at paragraphs 200 – 202 above. He said this demonstrated self-awareness on the part of the Registrant. He said the Panel should not underestimate how difficult it was to receive and accept such finding and it was neither desirable nor necessary to drub the Registrant or guild the lily. He said that impairment was concerned with the present not the past and the Panel's evaluative standpoint was today. He said Mr Stevens had raked over matters from years past for the purpose of impairment and that was all past conduct.

Decision on Impairment

212. The Panel determined that the decision to be made was one for it alone based on its findings of fact, breaches of the Code and of misconduct. These formed the basis from which a forward-looking assessment was to start. Whilst it could take account of the concession made today, to act on that alone as Mr Coppel said was to ignore the entirety of the process of the last year, the Registrant's regulatory history and consideration of any attitudinal changes, insight or remedial conduct. The Panel accepted the submission made by Mr Stevens that such matters could and should be accounted for when considering current impairment.

213. The Panel has already set out its findings on misconduct and the seriousness of that misconduct. When considering current impairment and the risk of repetition the Panel looked for evidence of acceptance, insight and remediation.
214. The Panel received no evidence of acknowledgement and reflection by the Registrant beyond the concession which Mr Coppel said was ‘unqualified’. Whilst impairment is binary in the sense that it is either found or not, as Mr Coppel said, that is to ignore the seriousness and depth of impairment. Whether and how such impairment had been or could be addressed, any evidence of learning or attitudinal change and the history, all of which impact upon the forward-looking issues of risk/public safety and of public interest.
215. In reviewing the evidence and its own findings the Panel concluded that the Registrant had shown little if any insight into his misconduct and had presented no evidence of reflection, learning, or remediation. Whilst today’s apparent concession might suggest the Registrant was about to start that process, as Mr Coppel suggested, it was contrary to everything else said and there was no evidence of it to date. It had the air of a concession made when confronted with adverse findings, rather than one based upon genuine self-reflection on which the Panel might place reliance.
216. Having found little or no evidence of acknowledgement, reflection, or remediation the Panel concluded that the risk of repetition was high. The Panel accepted that it could take the Registrant’s regulatory history into account as regards the risk of repetition as suggested by Mr Stevens. However, rather than do so directly, it made its findings regarding risk on the basis of the facts and misconduct proved. It then considered whether there was a history or any other evidence that mitigated such risk and concluded that there was not. The Panel has already noted that there were similar breaches of the Code in the 2019 case, and it could not conclude that the Registrant had learned from such a “life lesson” as Mr Coppel suggested. In light of all the above factors, the Panel found that the Registrant’s fitness to practise is currently impaired by reason of public protection.
217. In respect of the public interest, the Panel has already determined that the Registrant’s misconduct was serious, and it breached several parts of the Code. He has neither acknowledged nor remediated that conduct save for the concession made after adverse findings by this Panel. The Panel was of the view that the public interest was engaged in declaring and upholding standards and maintaining confidence in the profession and its regulation. For these reasons the Panel also found current impairment on the grounds of public interest.

Determination on Sanction

218. In accordance with rule 7.25 of UKCP's Complaints and Conduct Process, the Panel then went on to consider the question of sanction. This determination should be read in accordance with the Panel's previous decisions on the facts, misconduct and impairment.
219. In reaching its decision, the Panel had regard to the UKCP's Indicative Sanctions Guidance 2019 ("the ISG") but exercised its own independent judgement.
220. Mr Stevens invited the Panel to have regard to the principles set out in the ISG and said that sanctions were intended to protect the public and should be the least restrictive necessary to guard against the risks found by the Panel. He said the Panel should look at aggravating and mitigating factors as set out in the ISG and remarked that there was a marked absence of any mitigating factors such as insight, understanding, attempts to address shortcomings, overall practise, supervision, previous standing, or personal mitigation. He said there was a marked lack of insight and again the Panel could take account of the Registrant's previous history.
221. When considering any aggravating factors, Mr Stevens submitted that there were. He repeated that the Registrant was entitled to robustly defend himself and this should not be held against him (*Sawati v GMC, above*) but the Registrant had gone far beyond denial. He had been evasive in his evidence, belittled the seriousness of the case and rejected the suggestion of detriment to **A**. His evidence had been found to be misleading in at least one respect. His history was also an aggravating factor. In addition, **A** was vulnerable, and the Registrant had abused his position of trust and exploited **A** for gain and acted against her interests.
222. Mr Stevens then considered the available sanctions and submitted that termination of registration, a sanction of last resort, was nonetheless justified. He submitted that the lesser sanctions were insufficient. The case was a serious one involving exploitation, breach of confidentiality, abuse of trust, and the failings were persistent. To date the Registrant had failed to demonstrate any understanding of his errors or how to address them. He said the case was one of deliberate and prolonged misconduct with no insight and an unwillingness to remedy shortcomings. He said there was no evidence that the sanction of conditions would work nor was there any evidence that suspension would bring about change. Mr Stevens submitted that only termination would protect the public. In addition, due to the need to declare and uphold standards and maintain public confidence termination was appropriate on public interest grounds. Any lesser sanction would not maintain confidence or uphold standards.
223. Mr Coppel agreed that the salient points of the ISG were that sanctions were intended to protect not punish, they should be proportionate, and that aggravating and mitigating

factors should be considered. He said that the UKCP submissions were disconnected from these principles. Sanctions were not an opportunity to reopen misconduct but was to be applied to the misconduct proved which was limited to paragraphs 200 – 202 above. He said that the breach of confidentiality was characterised as ‘heinous’ whereas it was simply the Registrant messaging A without mentioning names or any identifying features. It had been dressed up as a reason to erase.

224. Mr Coppel said that ‘this Panel had to be very careful before ending the Registrant’s ability to practise his profession’. He said the UKCP had submitted there was a lack of mitigating factors, but this ignored the concession by the Registrant that he ‘got things wrong because he got involved’. This, he submitted, was evidence of insight and understanding of how and why things went wrong, and it was wrong for the UKCP to ignore that. Mr Coppel said that the concession was unqualified and unhesitating which demonstrated insight. It was a ready acceptance the UKCP had not referred to. In addition, the UKCP had failed to recognise the backdrop of the sudden termination of the professional relationship that was unfortunate for both A and the Registrant. He said this caused anxiety for A and for the Registrant to maintain that relationship or at least to manage the end of it.

225. Mr Coppel said that ‘it is not correct that the UKCP does not want to terminate the Registrant’s registration [rather] it had wanted to do so from the start. It had levelled 14 charges against him and only proved half of them.’

226. Regarding proportionality, Mr Coppel said the UKCP had not explained why a lesser sanction was not sufficient. He said there was no repetitive element to the Registrant’s misconduct. He had seen hundreds of clients over many years and there was no evidence that the conduct in this case was manifest in relation to others. This he said was a one-off episode arising from external events. He submitted that insight had been demonstrated in the hearing last year and today.

227. Regarding impairment, Mr Coppel said this had been conceded and that based on the findings by the Panel, what was required was a mix of professional training and supervision to increase the self-awareness found absent from the Registrant. A supervisor would report at the end of the supervision regarding the Registrant’s self-awareness and the Registrant would advise the UKCP of the training undertaken. He submitted that the public interest was also met by this approach. In summary, Mr Coppel said that the proportionate sanction was one tailored to the findings of a lack of self-awareness, blindness to self-importance, a failure to assess impact on A and not stepping back. He said the Registrant was capable of recognising and remediating his errors. The terms of any conditions and the period of time could be worked out, but this was the proportionate sanction.

228. The Panel heard and accepted the advice of the Legal Assessor. This included that the principal aim of sanction was not to punish but to protect the public, proportionality, the least restrictive sanction, admissions, seriousness, remediation or willingness to remediate, not treating a robust defence as an aggravating factor. The Panel recognised that the purpose of any sanction is protect the public and not to punish the Registrant, although sanctions may have a punitive effect. The Panel recognised that any sanction must be proportionate and weigh the public interest with that of the Registrant.
229. The public interest includes the protection of members of the public, including clients; the maintenance of public confidence in the profession; and the declaring and upholding of proper standards of conduct and behaviour within the profession.
230. The Panel considered the sanctions available to it under rule 7.25 of the Complaints and Conduct Process in ascending order and was mindful that any sanction imposed should be the minimum that would be considered proportionate and appropriate in the circumstances.
231. The Panel first considered any mitigating or aggravating circumstances. It noted that it had received no evidence regarding clinical supervision, personal therapy, testimonials, reflection, training since the serious misconduct, or the Registrant's current practise or workload.
232. Regarding mitigating circumstances, no additional evidence was presented to deal with the issues set out in Paragraph 2.5.2 of the ISG. During this case, the Registrant said he had had six years to think about the case, but the Panel saw little evidence of reflection, personal critique, learning or acceptance of support by supervision. The Panel noted the Registrant's comment that he 'got it wrong because he got involved' and it was argued that this demonstrated insight. However, this was one comment against a backdrop of denial of any wrongdoing at all, the assertion that if he was struck off, he would simply carry on doing what he wanted without the UKCP as a regulator and criticism of the UKCP as being motivated to 'get him'. However, the Panel bore in mind that the Registrant had rebutted half the case levelled against him and that at least in some respects his robust rebuttal of some of the allegations was justified. It considered that the comment might indicate the potential to understand his errors but, the Registrant had shown no inclination to address them.
233. As to an overall adherence to good practise, the Panel had received no evidence of this such as current work, testimonials, and the like, rather it noted that the Registrant said he had on occasion behaved in a way that his employers would question.

234. The Registrant stated that the most challenging clients were allocated to his caseload. Whilst the Panel accepted that he had seen many clients, it did not have a picture of this workload or how many clients he had seen without concern. It accepted this must have been quite a number.
235. Finally, the Panel noted that in respect of personal mitigation, these events were set against a background of stress resulting from the termination of the Registrant's therapeutic relationship with **A**, by reason of the suspension of his employment.
236. Regarding aggravating factors, the Panel regarded the Registrant as an experienced practitioner who should be aware of the boundaries to which he should adhere.
237. The Panel was informed of the Registrant's previous case and noted that it involved breaches of boundaries and similar themes to this case. In that case, no impairment was found based on that Panel accepting the Registrant's assertion that he had learned from his experience and it was a one-off. This case rather militated against the assertion that 'life is a teacher' and he had learned from his previous mistake.
238. The Panel also found it difficult to accept the above assertion that he had learned from the experience of the previous case given the evasive and critical nature of his evidence in this case. There was little or no acceptance of the seriousness of the case, or that he had caused harm to **A**, or that seeking a false testimonial regarding his company was a serious abuse of trust. In addition, his evidence regarding the letter of complaint has already been characterised as evasive. The Panel was careful to note that these are matters pertaining to insight and remediation, they are not aggravating factors applicable to the facts.
239. Whilst the Panel determined that seven allegations were not proved, ten were found proved. Nonetheless, the Registrant maintained his criticism of the proceedings and of the UKCP, criticising its motives and fairness. His continued denial of any harm to **A** made it difficult to accept that he saw his failings as serious, indeed there was no evidence that he did. Such an attitude does not aggravate the facts of the case but rather it made it difficult to accept the veracity of Registrant's acknowledgement of his impairment.
240. Finally, the Panel has received little information as to the Registrant's current circumstances. In evidence, he said that he was no longer in private practice, but he continued to run his company. His comment that he would do what he wanted and see who he wanted even if he were struck off the UKCP register rather suggested that he was still in practice to an extent. The Panel was presented with limited information concerning any current supervision engaged by the Registrant, professional development, or learning.

241. When looking at the elements of the case the Panel considered that there was no sexual element to the misconduct and, whilst there was the potential for financial gain, it was indirect and limited, the breach of confidentiality was a single instance and, despite being somewhat thoughtless and salacious gossip, it was not the most egregious. The letter was inappropriate and self-serving. What remained most troubling was the Registrant's lack of insight, his attitude to the case and to the rules and regulation of practise. He did not appear to have learned from his earlier case (2019) and he either did not have or did not use appropriate clinical supervision to challenge his shortcomings.

242. The Panel next considered the range of sanctions starting with the least restrictive sanction.

Apology

The Panel concluded that this was insufficient to meet the seriousness of the case. The Registrant had shown little acceptance or remorse for his misconduct, from which to gauge the sincerity of an apology. Rather, he continued to criticise the previous NHS Trust process, the regulatory process, and the regulator.

Written Warning

The Panel concluded this too was neither appropriate nor proportionate for the same reasons as above. The Panel had received no evidence upon which to conclude that a written warning would be sufficient to result in a change to the Registrant's practice, thereby protecting the public.

Oral or written Report.

The Panel concluded this too was neither appropriate nor proportionate for the same reasons as above.

Training

The Panel was of the view that a particular issue in this case is the Registrant's lack of a real acceptance or insight into his errors. On the one hand, he said he accepted he is currently impaired. On the other, he said he would carry on regardless of any sanction. To be effective training would need to be clear, concise, achievable and have specific goals in mind. None were put forward in argument. The Panel determined that there was no evidence from which to conclude that the Registrant is able or willing to address his attitudes and behaviour and change them. The Registrant is an experienced practitioner who, by now, should be aware of the boundaries to which he ought to adhere. Given all the circumstances of the case, the Panel concluded that training was unlikely to address the Registrant's shortcomings and none was specified.

Supervision and/or Therapy

The Registrant said that he had supervision during the period of these events, however his description was more of a friend and or someone dealing with managerial matters. There appeared to be no clinical supervision or challenge to the Registrant's clinical practice. There was no evidence from which this Panel could conclude that the Registrant would respond positively to such challenge and change his attitude to his practice, or the protection provided by the adherence to rules and regulation.

There was no evidence from which this Panel could conclude that the Registrant required, or would benefit from, any form of therapy and, again, nothing was proposed.

Conditions of Practice

The Panel considered that the points outlined above apply to conditions. Conditions need to be concise, measurable, and achievable with specific goals in mind. They are most appropriate in cases of clinical concern and in cases where a Registrant had "displayed insight into their failings and the willingness to respond positively and adhere to the stipulated conditions". A principal issue in this case is that the Panel has seen no evidence from which it could conclude he was willing or likely to change. No conditions were suggested, and the Panel could not devise conditions that would address this issue.

Suspension

The Panel next considered suspension which may be for up to twelve months. This might protect the public if a suspension was adhered to but, the Panel was troubled by the Registrant's evidence that he would simply carry on doing what he wanted. Whilst suspension would mark the gravity of the case, the Panel had little confidence it would mean much to the Registrant and therefore be a catalyst for change.

The Panel considered the possibility of combining suspension with training, supervision and reports by the trainer(s), supervisor(s) and the Registrant. However, it has already determined that each of these sanctions had little prospect of invoking the change needed in the Registrant and thus little prospect of protecting the public. It had no confidence that a combination of sanctions would have any greater prospect of protecting the public.

Removal from the Register

The Panel concluded that a removal order was the only appropriate and proportionate sanction in this case. The Panel carefully considered every lesser sanction both individually and in combination with others but, it concluded that none would protect the public. There was no evidence from which the Panel could conclude that the Registrant could or would gain insight or change in order to prevent a recurrence of events such as those found proved. That being the case, removal from the register was the only proportionate and sufficient sanction to protect the public.

243. Finally, the Panel considered the wider public interest of declaring and upholding standards, maintaining public confidence in the profession and its regulation in order to demonstrate the protection afforded to patients when seeing practitioners. The Panel has determined that the case is serious involving a prolonged breach of boundaries. It has seen little or no evidence from which it could conclude that the Registrant could or would change his attitude to practise such that, moving forward, the public would be protected. It had seen no evidence from which it could conclude that the Registrant acknowledged the standards required of him.

244. Given its findings, the Panel was of the view that the sanction it had imposed on grounds of public protection was also necessary in the public interest. No lesser sanction would maintain public confidence in the profession or the regulation thereof.

Application for an interim suspension order

245. Having made its decision on sanction the Panel announced its decision and provided time for the parties to consider the written determination and make any further submissions.

246. Mr Mekkaoui, appearing on behalf of the UKCP, applied for an Interim Suspension Order (ISO) to cover the period during which the Registrant may appeal the Panel's decision. Mr Mekkaoui submitted that an ISO was necessary to protect the public and was otherwise in the public interest given the decision of the panel. He confirmed that the Registrant was informed of the possibility of an ISO by correspondence in December 2023.

247. Mr Coppel said that the Registrant was no longer on the UKCP register and thus he could not be removed from it, nor could any ISO be imposed.

248. Mr Mekkaoui confirmed that the Registrant's registration was not renewed in 2022 but submitted that Paragraph 3.4 of the Complaints and Conduct Process covered this position since it provides that *"If the Registrant resigns from the UKCP register, or fails to renew UKCP membership, after a complaint has been received by UKCP, the complaint will still proceed pursuant to this procedure unless, in exceptional circumstances, the Case Manager determines it would not be reasonable or in the public interest for it to do so."*

249. Mr Coppel repeated his submission that since the Registrant was not on the Register, he could be erased from it nor could any ISO be imposed. He said that there was no risk to the public and no public interest in imposing an ISO. He submitted that the application for the ISO was "gratuitous" and "consistent with the vindictiveness of the UKCP and the Panel should not condone or connive in such conduct".

250. The Panel accepted the advice of the Legal Assessor. This included that the first principle of these proceedings is to protect the public. Paragraph 3.4 enabled these proceedings to continue despite a registrant's resignation or non-renewal of their registration. The Panel should treat Paragraph 3.4 as meaning that for the purposes of these proceedings the registrant remained on the register. To do otherwise would mean that a registrant could circumvent proceedings and prevent any sanction or ISO by resigning/not renewing. This would meet neither the public interest nor protect the public.

251. The parties were invited to say if they agreed or disagreed. Mr Mekkaoui accepted the advice. Mr Coppel submitted it was wrong in law.

252. The Panel determined that the words "***the complaint will still proceed pursuant to this procedure***" in Paragraph 3.4 meant that the Panel should, for the purposes of these proceedings, treat the Registrant as if he were registered. It does not place an end point on the proceedings but provides that the proceedings will continue in the normal way. That included the consideration of sanction and ISO if requested. To do otherwise would render these proceedings meaningless and of no effect.

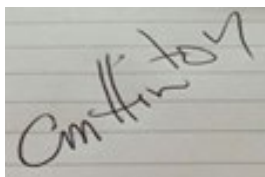
253. Having determined that there were specific risks in this case both to the public and to the public interest the Panel considered that an ISO was necessary to protect the public and was otherwise in the public interest. It concluded that it would be inconsistent with its previous assessment of the Registrant and the case to not impose an ISO covering the period in which an appeal may be heard which may extend to many months.

Right of Appeal

254. Both the Registrant and UKCP have 28 days from when the written decision is served in which to exercise their right of appeal.

255. The sanction outlined above will not take effect until after the 28-day period has lapsed. If no appeal is received the decision will take effect after the 28th day.

Signed,

A photograph of a handwritten signature in black ink on lined paper. The signature is written in a cursive style and appears to read 'Catherine Hinton'.

Catherine Hinton, Lay Chair

22 March 2024